

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

MAY 9, 2006

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:58 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice-Chairperson
CURTIS ETHERLY, JR.	Board Member
JOHN MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

JOHN PARSONS	Commissioner (NPS)
--------------	--------------------

COMMISSION STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLEY BAILEY	Sr. Zoning Specialist
JOHN NYARKU	Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

ARTHUR JACKSON  
MATT JESSICK  
STEPHEN MORDFIN  
STEVEN RICE

The transcript constitutes the minutes  
from the Public Hearing held on May 9, 2006.

## C-O-N-T-E-N-T-S

Call to Order . . . . .	5
<u>Application No. 17471 of Paul Heavey</u> . . . . .	10
Jennifer Fowler and Paul Heavey	
Preliminary Matters . . . . .	10
Presentation by Ms. Fowler . . . . .	11
Steven Rice, Office of Planning . . . . .	14
Discussion by the Board . . . . .	16
Vote . . . . .	18
<u>Application No. 17464 of Sherman Arms LLC</u> . . . . .	19
Garland Stillwell . . . . .	20
Law Offices of Pillsbury, Winthrop, Shaw, Pittman	
Charlton Hamer, Vice President . . . . .	23
Vesta Corporation	
Jack Kerry, CEO., Kerry Company . . . . .	27
Dave Goslin, Crosskey Architects . . . . .	46
Christine Laudy, Pillsbury, Winthrop, Shaw, Pittman	
Absalom Jordan, ANC-8D Commissioner . . . . .	58, 78
O. V. Johnson, ANC-8D Commissioner . . . . .	60, 72
Robin Adams, ANC-8D Commissioner . . . . .	75
Stephen Mordfin, Office of Planning . . . . .	66
Comments from the Public . . . . .	91
Dorothy M. Smith . . . . .	91
Richard Carthone . . . . .	96
Closing Remarks by Applicant . . . . .	101
Garland Stillwell . . . . .	101
<u>Application No. 17466 of 2109 10th Street</u> . . . . .	111
<u>Associates LLC</u>	
Steven E. Sher, Director of Zoning . . . . .	112, 114
and Land Use Services	
Law Firm of Holland & Knight	
Paul Robertson . . . . .	121
Phil Spalding, ANC-1B . . . . .	113, 133
Matt Jessick, Office of Planning . . . . .	127
Closing Remarks by Applicant, Steven E. Sher	135
Discussion by Board . . . . .	138
Vote . . . . .	140
<u>Application No. 17463 of ARCH Training Center</u> . . . . .	148
Cynthia Giordano . . . . .	150
Law Firm of Arnold and Porter	
Nathan Gross, Law Firm of Arnold and Porter . . . . .	167
Rachel Schroder, Chairman of the Board . . . . .	151

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

ARCH Training Center	
Stephen Shaff, Community Vision Consultants . . . . .	151
Greg Kearley, Inscape Studio . . . . .	160
Latesha Hudson, ANC-8A04 . . . . .	174, 193, 195, 232
Arthur Jackson, Office of Planning . . . . .	164, 182, 223
Comments from the Public . . . . .	199
Carolyn Johns Gray, President . . . . .	199
Frederick Douglass Community Improvement Council	
Marcus Clark, Homeowner's Association . . . . .	212
Mary Ann Miller, Homeowner . . . . .	216
Peggy Telesford, Homeowner . . . . .	219
Applicant's Response . . . . .	226
Closing Remarks by Applicant . . . . .	238
Discussion by Board . . . . .	240
Vote . . . . .	254
<u>Application No. 17465 - Appeal of . . . . .</u>	<u>255</u>
<u>Advisory Neighborhood Commission 3D</u>	
Paul Kiernan of Holland & Knight, . . . . .	257
on behalf of the Intervener	
Dorchester Associates	
Morton Bender, Owner	
Alma Gates, Chair of ANC-3D . . . . .	263
Judith Lanius, Chain Bridge Road University Terrace Preservation Committee	
Discussion by Board . . . . .	274
Vote . . . . .	277
Adjourn . . . . .	277

# NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

P-R-O-C-E-E-D-I-N-G-S

9:58 a.m.

CHAIRPERSON GRIFFIS: I call to order our public hearing of the 9th of May, 2006.

We will be joined by Mr. Mann, who will be representing the National Capital Planning Commission.

I will still be Geoff Griffis, Chairperson today of the Board of Zoning Adjustment, and with me, of course, is Ms. Miller, the Vice Chair, and Mr. Etherly, representing the Zoning Commission. With us this morning in our session is Mr. Parsons.

Copies of today's hearing agenda are available for you. They are located where you enter into the hearing room. You can pick one up and see where you will fall. I will not be changing the schedule this morning. So we will take this in the order of which they have been published.

With that, though, there are several very important things. I am going to ask that everyone please turn off cell phones or beepers at this time as it will disrupt the transmission of our hearings.

And our hearings are in the public, of course, and they are recorded and broadcast. They are recorded by the court reporter, sitting on the floor to my right. They are creating the official

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 transcript which will be part of the record.

2 We are also, as many of you probably are  
3 aware, being broadcast live on the Office of Zoning's  
4 website.

5 So attendant to that, there are several  
6 additional things. I am going to ask that everyone  
7 fill out two witness cards prior to coming forward to  
8 speak to the Board. Witness cards are available,  
9 hopefully, at the table where you entered into the  
10 room. If not, the court reporter has some. Pick  
11 those up; fill it out. It's your name and address.  
12 That goes to the recorder prior to coming forward.

13 When you sit down in front of the table  
14 where you will provide testimony, I would ask that you  
15 just state your name and address for the record. You  
16 only need to do this once. Obviously, that will set  
17 the record on who we have in front of us. Thank you  
18 very much for those cards.

19 The order of procedure for special  
20 exceptions and variances is as follows: First, we  
21 hear from the applicant and the presentation of their  
22 case. Secondly, we will hear from any government  
23 agencies reporting on an application: the Office of  
24 Planning, Department of Transportation. Third, we  
25 will hear from the advisory and neighborhood

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 commission within which the property is located.  
2 Fourth will be persons or parties in support of an  
3 application. Fifth would be persons or parties in  
4 opposition to an application. Finally, sixth, we  
5 would hear any rebuttal testimony from the applicant  
6 or closing remarks and summations.

7 Cross examination of witnesses is  
8 permitted by the parties in the case. The agency  
9 within which the properties are located is  
10 automatically a party in the case. Of course, the  
11 applicant is also a party in the case. We will  
12 establish parties in each case if there is timely  
13 request for party status.

14 The record will be closed at the  
15 conclusion of the hearing on a case, meaning when we  
16 finish today, our record closes; the book shuts,  
17 except for any material that the Board would request.  
18 We at times do request additional information, but we  
19 will be very specific on what that information is and  
20 when it is to be in the record.

21 As you heard a little bit about this  
22 morning, whether you caught it or not, there were  
23 things that came into the record that were returned,  
24 the Board did not see and did not review, and,  
25 therefore, did not deliberate on. So it is very

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 important that you get the information you want the  
2 Board to look at into the record, and, of course, it  
3 would be germane and jurisdictional for our review.

4 The Sunshine Act does require that this  
5 Board hold all its hearings in the open and before the  
6 public. We do from time to time enter into Executive  
7 Session. That is for reviewing the facts on each case  
8 or deliberating on a case. When this happens, and it  
9 does very seldomly, but when it does, this is, of  
10 course, in accordance with our rules, regulations,  
11 procedure. It is also in accordance with the Sunshine  
12 Act.

13 Again, I would state very strongly that  
14 the decision of this Board is based exclusively on the  
15 record that is created before us. So attendant to  
16 that also, we ask that people present today, if you  
17 see a Board member at a recess or at lunch, not engage  
18 us in private conversations. This may lend to the  
19 idea that we are receiving information outside of the  
20 public record.

21 To that, as we continue on, let me ask all  
22 those people present today that are thinking of or  
23 will provide testimony to the Board, I would ask you  
24 to please stand and give your attention to Ms. Bailey,  
25 who is on my very far left. She is going to swear you

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 in.

2 MS. BAILEY: Would you please raise your  
3 right hand?

4 (Witnesses sworn.)

5 CHAIRPERSON GRIFFIS: Excellent. Thank  
6 you all very much.

7 I was going through it so quickly, trying  
8 to make up a little time, that I didn't say a very  
9 good morning to Ms. Bailey, who is with the Office of  
10 Zoning, and also Mr. Moy, with the Office of Zoning,  
11 Mr. Nyarku, who is also with the Office of Zoning and  
12 he is in and out assisting the Board in its  
13 requirements.

14 With that, I do believe we are ready to  
15 look at any preliminary matters. Preliminary matters  
16 are those which relate to whether a case will or  
17 should be heard today. Request for postponements,  
18 withdrawals, whether proper and adequate notice has  
19 been provided, these are elements of preliminary  
20 matters.

21 If you have a preliminary matter for the  
22 Board, meaning if you do not believe that the case  
23 should go forward that is on the schedule today or you  
24 are not prepared to go forward with a case this  
25 morning, I would ask you to come forward, have a seat

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 at the table in front of us as an indication of a  
2 preliminary matter.

3 With that, then, let me ask Ms. Bailey if  
4 you are aware of any preliminary matters that the  
5 Board needs to be attentive to at this time.

6 MS. BAILEY: Mr. Chairman, members of the  
7 Board, and to everyone, good morning.

8 There are preliminary matters, but they  
9 are case-specific. So, with the Board's approval,  
10 after calling the case, if you would prefer, I can  
11 deal with the preliminary matters at that time.

12 CHAIRPERSON GRIFFIS: Excellent. I think  
13 that is appropriate.

14 MS. BAILEY: That's all that staff has.  
15 I don't know if anyone else has anything.

16 CHAIRPERSON GRIFFIS: Doesn't appear to.

17 MS. BAILEY: Okay. First case is  
18 Application No. 17471 of Paul Heavey, pursuant to 11  
19 DCMR 3104.1, for special exception to allow a rear  
20 addition to an existing single-family row dwelling  
21 under Section 223, not meeting the lot occupancy  
22 requirements, Section 403; the property is zoned R-4  
23 and it is located at 309 K Street, Northeast, Square  
24 775, Lot 33.

25 The preliminary matter associated with

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 this case is it was not posted until this past Friday,  
2 May 5th, and so it's obviously late, Mr. Chairman.

3 CHAIRPERSON GRIFFIS: Indeed. Thank you  
4 very much.

5 Why don't you just introduce yourselves  
6 for the record?

7 MS. FOWLER: Hi. I'm Jennifer Fowler of  
8 1742 D Street, Southeast, in D.C. I'm the architect  
9 on the project.

10 MR. HEAVEY: My name is Paul Heavey, 309  
11 K Street, Northeast. I'm the owner.

12 CHAIRPERSON GRIFFIS: Excellent. Ms.  
13 Fowler, you've heard Ms. Bailey indicate that there is  
14 a preliminary matter as this was not posted for the  
15 time requirement. Reasoning?

16 MS. FOWLER: This was purely an oversight  
17 on my part and it was not intentional. I just missed  
18 the deadline, unfortunately.

19 CHAIRPERSON GRIFFIS: Yes, okay. Of  
20 course, it has been through the ANC and, obviously,  
21 was mailed and corresponded to. I don't see any  
22 reasoning, unless other Board members have any  
23 contrary view, that we would not hear this today.

24 However, I do want to impress upon very  
25 strongly, Ms. Fowler, you're obviously very familiar

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 now with the applications that have come through, and  
2 it serves, I would say, you and your clients well, but  
3 it also serves us very well if these, although it  
4 oftentimes seems perhaps too dry or boring, but these  
5 are very important aspects, too, because the same  
6 threshold that we ask of you is the next applicant,  
7 the one tomorrow, and next week; it is a very  
8 important piece.

9 It will, in fact, just waste your time,  
10 your client's time, and our time if there is any  
11 difficulty or complication and we have to re-advertise  
12 this, we will set this off; in fact, today, if we did  
13 not hear this, we might not hear this until September.  
14 Obviously, it doesn't serve anyone to do that.

15 So, if we can ask you to be very  
16 deliberative in getting that done next time, I know we  
17 won't run into this again.

18 Very well. With that, then, we do have,  
19 as announced, a Section 223 application. My Board is  
20 very well aware of my small comments on the 223, but  
21 I'm going to turn it over to you with this small  
22 direction: I think the record is very full on this.  
23 If you wanted to summarize, even stand on the record,  
24 I think we could proceed, but I'll let you address the  
25 Board.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 MS. FOWLER: Okay, yes, I would like to  
2 stand on the record and just add that we do have  
3 neighbor support from both sides, and we have ANC-6C  
4 support, as well as the Capitol Hill Restoration  
5 Society. So it has been well-received and supported.  
6 Thank you.

7 CHAIRPERSON GRIFFIS: Excellent. Thank  
8 you very much. I think that's the absolute point to  
9 bring up and highlight. I thought it was well-served  
10 that the ANC actually asked that. I think, if I read  
11 the record correctly, that there was some indication  
12 that they had requested letters from the neighbors,  
13 and I think it is very important.

14 I know other Board members looked at this  
15 and found that that would probably have been the only  
16 real issue of concern. As it is addressed, I think we  
17 can move ahead.

18 Are there any other questions from the  
19 Board? Complications? Ms. Miller?

20 VICE CHAIRPERSON MILLER: I just was  
21 looking at the record and would note that the Office  
22 of Planning's report was also filed late, I believe.  
23 We might want to consider waiving that requirement.

24 CHAIRPERSON GRIFFIS: Should I give them  
25 a hard time?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 VICE CHAIRPERSON MILLER: We can ask their  
2 reasoning, right?

3 CHAIRPERSON GRIFFIS: Excellent. That  
4 moves us right into the Office of Planning's untimely  
5 report, an excellent one at that, with in fact the  
6 photographs.

7 However, before we look at that, why don't  
8 you introduce yourself and just give us a little  
9 understanding of why it was not timely.

10 MR. RICE: Good morning, Mr. Chairman and  
11 Board. My name is Steven Rice.

12 I don't have any excuse for the  
13 untimeliness of the application. I think it just got  
14 mixed up, the paperwork.

15 CHAIRPERSON GRIFFIS: Procedurally, then,  
16 is there any opposition to the Board accepting it into  
17 the record?

18 VICE CHAIRPERSON MILLER: No opposition.

19 CHAIRPERSON GRIFFIS: I can't imagine.  
20 Okay, very well. We do appreciate it.

21 Let me just step aside a little bit  
22 because I think it is not very often that we don't  
23 have timely reports from the Office of Planning, but  
24 there's a bigger issue here that I think is a positive  
25 one, is that getting Office of Planning reports on 223

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 applications to begin with I think is impressive. I  
2 mean the amount of analysis and work that goes into  
3 it, and it was not many years ago that that would not  
4 have happened. So we absolutely require it to be  
5 timely, but it is also good to have them.

6 Mr. Rice, I'll turn it to you.

7 MR. RICE: Well, the Office of Planning  
8 does recommend approval for the application. As  
9 mentioned, we have received support from both the ANC-  
10 6C, the abutting neighbors, and the Capitol Hill  
11 Restoration Society's Zoning Committee. We do support  
12 their application.

13 CHAIRPERSON GRIFFIS: Excellent. Thank  
14 you very much.

15 Questions from the Board?

16 Ms. Fowler, do you have any cross  
17 examinations/questions of the Office of Planning?

18 MS. FOWLER: No, thank you.

19 CHAIRPERSON GRIFFIS: Very well, let's  
20 move ahead then.

21 I do not see any other government agency  
22 reports on this application, unless the Applicant is  
23 aware of any.

24 Is the ANC present, ANC-6C? The ANC is  
25 not noted as present. They have filed an Exhibit 20,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 their report, which was, I might say, timely, the ANC  
2 report, and it was, of course, recommending approval  
3 of the application. We've already touched upon some  
4 of the issues that they had brought up, which I  
5 thought were good.

6 Lastly, the Capitol Hill Restoration  
7 Society, we talked about that also. Is Mr. Peterson  
8 or any representative of the Capitol Hill Restoration  
9 Society present?

10 (No response.)

11 Not noting any present, we will note  
12 Exhibit 21 also in support of the application.

13 Very well. Let me ask, are there any  
14 persons present in Application 17471, in support or in  
15 opposition, that would like to provide testimony,  
16 persons to provide testimony?

17 (No response.)

18 Not noting any persons present to provide  
19 testimony in 17471, I would turn it over to you, Ms.  
20 Fowler, for any closing remarks you might have.

21 MS. FOWLER: I would just like to thank  
22 the Board for your time and Mr. Rice for his report.  
23 Thank you.

24 CHAIRPERSON GRIFFIS: Excellent. Thank  
25 you very much.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 I think it's expeditious if we continue  
2 our thoughts and comments and deliberation under a  
3 motion. I would move approval of 17471 under special  
4 exception under Section 223, as this property does not  
5 meet the lot occupancy requirements, and it is the  
6 premises of 309 K Street, Northeast. I would ask for  
7 a second.

8 MEMBER ETHERLY: Second, Mr. Chair.

9 CHAIRPERSON GRIFFIS: Thank you very much  
10 for the second. I do appreciate it. I think it does  
11 meet all the tests as outlined, one, in the  
12 Applicant's submissions and also the Office of  
13 Planning's excellent analysis of the special exception  
14 requirements under 223.

15 I would note that there's particular  
16 attention paid to the graphics representation of this  
17 and also the materials, not going into the specifics,  
18 but I think it is appropriately done for the rear  
19 addition, but also I think it takes into account the  
20 character and the masking of the existing and the  
21 surrounding structures, which is, of course, one of  
22 the aspects of the 223 special exception requirements.

23 Noting also that the letters of support or  
24 non-opposition of the adjacent neighbors, which would  
25 be, of course, the most affected, are very persuasive

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 in the application.

2 I would turn to anyone else for any other  
3 additional comments.

4 (No response.)

5 Not noting any additional comments to the  
6 Board, I think we can move ahead with our motion. It  
7 has been seconded.

8 I would ask for all those in favor of the  
9 motion signify by saying aye.

10 (Chorus of ayes.)

11 And opposed?

12 (No response.)

13 Abstaining?

14 (No response.)

15 Very well, why don't we record the vote?

16 MS. BAILEY: Mr. Chairman, the vote is  
17 being recorded as five, zero, zero to approve the  
18 application. Mr. Griffis made the motion. Mr.  
19 Etherly seconded. Mr. Mann, Mrs. Miller, and Mr.  
20 Parsons are in support.

21 CHAIRPERSON GRIFFIS: Excellent. Thank  
22 you very much. Thank you all very much.

23 MS. FOWLER: Thank you.

24 CHAIRPERSON GRIFFIS: Enjoy. Good luck.

25 MR. HEAVEY: Thank you.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: We will see you next  
2 time, Ms. Fowler.

3 MS. BAILEY: Go through a summary order or  
4 a full order, Mr. Chairman?

5 MR. MOY: Mr. Chairman, would you like to  
6 waive the regulation for a summary order?

7 CHAIRPERSON GRIFFIS: Might as well. As  
8 we are picking up speed here, why don't we waive our  
9 rules and regulations and issue a summary order on  
10 that. I don't see any reason why we wouldn't unless  
11 there is opposition from the Board or the Applicant.

12 Not noting any, let's move ahead then and  
13 call the next case for the morning.

14 MS. BAILEY: The next case, Mr. Chairman?

15 CHAIRPERSON GRIFFIS: Yes, please.

16 MS. BAILEY: Application No. 17464 of  
17 Sherman Arms LLC, pursuant to 11 DCMR 3104.1, for a  
18 special exception to allow a community service center  
19 under Section 334. The property is located in the R-  
20 5-A district in a cul-de-sac on 8th Street, Southeast,  
21 Square 6209, Lots 28 through 31.

22 Mr. Chairman, just a brief note to  
23 indicate that the address was advertised as the 700  
24 block of 8th Street, Southeast, but the staff does not  
25 believe that is correct. So some clarification may be

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 needed there.

2 CHAIRPERSON GRIFFIS: Excellent. Thank  
3 you very much.

4 Are there any other preliminary matters  
5 attendant do this? I don't see any indicated.

6 MS. BAILEY: Yes, I'm not aware of any at  
7 this time, sir.

8 CHAIRPERSON GRIFFIS: Okay, good. What we  
9 are going to do, then, do we have a visual  
10 presentation? Is that correct?

11 MR. STILLWELL: That is correct, Mr.  
12 Chairman. There is a five-minute segment.

13 CHAIRPERSON GRIFFIS: Okay, good. Let me  
14 ask if those easels could be moved. We're going to  
15 angle them a little bit, if you wouldn't mind just  
16 angling them. Right at the edge of the table, we'll  
17 angle them this way. Yes, keep turning. That way, I  
18 believe they will be able to be picked up by the  
19 cameras. That way, they won't get in the way of your  
20 screen. Yes, that seems to be good.

21 Okay, why don't we start when you're  
22 ready.

23 MR. STILLWELL: Yes, good morning, Mr.  
24 Chairman and members of the Board.

25 For the record, my name is Garland

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 Stillwell with the Law Office of Pillsbury, Winthrop,  
2 Shaw, Pittman, representing the Applicant today, Vesta  
3 Corporation which is here before you for a special  
4 exception review of a community center.

5 First, before I speak briefly on the case,  
6 I would like to introduce the team. To my immediate  
7 right is Mr. Charlton Hamer, Vice President of Vesta  
8 Corporation. To his right is Mr. Jack Kerry, CEO of  
9 the Kerry Company, who will be the operator of the  
10 proposed service center. To his immediate right is  
11 Mr. Dave Goslin of Crosskey Architects, who is the  
12 project architect. Also assisting me today is an  
13 associate from my office, Ms. Christine Laudy, also of  
14 Pillsbury, Winthrop, Shaw, Pittman.

15 Mr. Chairman, if I could speak to the  
16 address issue that was brought to my attention this  
17 morning, I have conferred both with your staff and  
18 with the Office of Planning. To be perfectly honest,  
19 we are not sure where that reference of 700 block came  
20 from. It is not in our application. It is referenced  
21 in the Office of Planning report, and Mr. Mordfin has  
22 indicated that he believed he saw it in one of the  
23 affidavits.

24 But, just for the record, the property is  
25 vacant and does not have a designated address and has

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 never had a designated address, to our knowledge. So  
2 at no point during our presentation will we be  
3 referencing the 700 block of 8th Street. So I'm not  
4 sure how you would like to proceed with that, but we  
5 concur that that is not the accurate property address.

6 CHAIRPERSON GRIFFIS: We could pick an  
7 address.

8 (Laughter.)

9 I think that's fine. How are we actually  
10 legally designating this? By lot and square, is that  
11 correct?

12 MR. STILLWELL: That is correct.

13 CHAIRPERSON GRIFFIS: Okay, so we will  
14 proceed in that fashion then, and I think, obviously,  
15 at the appropriate time in your process, if this was  
16 approved and moves forward, you would obviously set an  
17 address on this. For our purposes, unless I am  
18 mistaken, I think the lot and square would be  
19 sufficient for our proceedings.

20 MR. STILLWELL: Yes, and just for the  
21 record, the property is located in Square 6209 and  
22 comprised of Lots 28 through 31, and is referenced by  
23 the D.C. Office of Surveyor Platt that is in your  
24 Exhibit Book No. 4.

25 CHAIRPERSON GRIFFIS: A quick question,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 then, to clear it up: The cul-de-sac that is shown on  
2 that is 8th Street. Does 8th Street go all the way  
3 into the cul-de-sac or --

4 MR. STILLWELL: Eighth Street does go all  
5 the way into the cul-de-sac.

6 CHAIRPERSON GRIFFIS: Okay. So there is  
7 no time where the public right-of-way ends and it  
8 becomes private?

9 MR. STILLWELL: That is correct.

10 CHAIRPERSON GRIFFIS: Okay, good enough.

11 MR. STILLWELL: Again, just real briefly  
12 before I introduce my first witness, I would just like  
13 to state for the record that this is a special  
14 exception for a community center. However, we will  
15 indicate during our presentation that this is much  
16 more than a community center. This is actually a  
17 learning center. As the Applicant will describe to  
18 you, it is very much more integrated than community  
19 centers that may have been before you before, and we  
20 believe that after the testimony presented that it  
21 will meet the requirements under Section 3104.1 and  
22 352.1 of the zoning regulations.

23 With that, I would like to call my first  
24 witness, Mr. Charlton Hamer.

25 MR. HAMER: Good morning. Again, my name

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 is Charlton Hamer. I'm Vice President of Development  
2 with Vesta Corporation. Vesta Corporation is located  
3 in Weatogue, Connecticut, which is a suburb of  
4 Hartford.

5 Vesta's primary responsibility or focus is  
6 on the development of affordable housing for its own  
7 portfolio. We have approximately 2900 units in  
8 Connecticut, Ohio, Texas, and New Jersey. We also  
9 provide development services on a case-by-case basis.  
10 That includes arranging financing, whether it be debt  
11 or equity, and/or property management.

12 The principals of Vesta Corporation have  
13 been in business for over 25 years. They have been  
14 involved in closings totaling over \$500 million. That  
15 equates to about 15,000 units in 11 different states.

16 In the upcoming weeks, Vesta Corporation  
17 will be closing on 180 units located on the corner of  
18 Chesapeake Street and Southern Avenue in Southeast  
19 D.C. We will invest approximately \$51,000 a unit in  
20 the upgrading of this facility. The development is  
21 right now commonly known as Avalon and Southern Court  
22 Apartments.

23 Again, we will be investing about \$51,000  
24 a unit in upgrading those apartments. That consists  
25 of new roofing, perimeter fencing, security upgrades,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 new flooring, new cabinetry, and so forth.

2 The total site area is approximately a  
3 little over five acres. Within those five acres is  
4 the site that we have in front of you today, which are  
5 Lots 28 through 31, Square 6209.

6 On that site we will be constructing our  
7 new learning center. Vesta's mission is not just the  
8 bricks and mortar of development. It also deals with  
9 the enhancement of the quality of life of the  
10 individuals and families at our site.

11 For you to get a clear grasp of our  
12 learning centers, of which we have six currently open,  
13 four in Connecticut, one in Cleveland, and another one  
14 in Columbus, Ohio, I would like to show you a brief  
15 video that deals with the learning center at our  
16 Rainbow Terrace property in Cleveland, Ohio.

17 MR. STILLWELL: Mr. Chairman, for whatever  
18 reason, the sound component just went out. So what I  
19 would like to do is have Mr. Hamer, while your tech  
20 person comes up to take a look at it, just describe  
21 some of the functions, activities of the learning  
22 centers.

23 CHAIRPERSON GRIFFIS: That's fine.  
24 However, why don't we see if we can get that rolling  
25 and, if so, we can do it.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1                   You have an extensive amount in the record  
2                   also, just written, which I know we have all read. So  
3                   we're very briefed on it. I like visuals. So if we  
4                   can get it rolling, that's fine.

5                   MR. STILLWELL: Okay.

6                   CHAIRPERSON GRIFFIS: But let's move ahead  
7                   and then we can always play it at the end as kind of  
8                   a celebration.

9                   MR. STILLWELL: Okay. If we can just take  
10                  a brief moment, your tech person is here.

11                  CHAIRPERSON GRIFFIS: Sure.

12                  MR. STILLWELL: And while they are looking  
13                  at it, it is a five-minute clip. We do have copies in  
14                  a DVD format to pass out to each member.

15                  If you could rewind it and drop the main  
16                  screen, please? That's fine. And if you could drop  
17                  the main screen? If I had my daughter here, she is  
18                  very good with remotes, she would have fixed this in  
19                  a second.

20                  CHAIRPERSON GRIFFIS: I think you have to  
21                  be under a certain age to do that.

22                  (Laughter.)

23                  (Video shown.)

24                  MR. STILLWELL: If I can ask the staff to  
25                  set the monitor for PC for the next presentation?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1                   This would conclude Mr. Hamer's part of  
2                   the presentation. He will be available for questions.

3                   Ms. Laudy will be passing out, in  
4                   addition, too, copies of the video you just saw.

5                   (Whereupon, the foregoing matter went off  
6                   the record at 10:30 a.m. and went back on the record  
7                   at 10:32 a.m.)

8                   MR. STILLWELL: I think we're back on.

9                   CHAIRPERSON GRIFFIS: Excellent.

10                  MR. STILLWELL: What I was indicating  
11                  earlier is that concludes Mr. Hamer's part of the  
12                  presentation, but he will be available for questions.  
13                  We are ready to go to our next witness, Mr. Jack  
14                  Kerry.

15                  MR. KERRY: Good morning, and thank you  
16                  for inviting me here or allowing me to speak. My name  
17                  is Jack Kerry. I'm the President of the Kerry  
18                  Company. We are a Washington, D.C. firm.

19                  I think what I am going to do, instead of  
20                  trying to use this technology -- I will give that a  
21                  shot in a second here -- we also prepared for you a  
22                  set of screen shots of what we were going to show you  
23                  for a backup.

24                  One quick word about the video that you  
25                  just saw: That place is my pride and joy, as you can

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1        imagine. The young woman who wrote that poem was a  
2        student, is a student at the center. She is now 17  
3        years old. She started out three years ago when she  
4        was 14.

5                The genesis of that poem was that, as all  
6        kids do, one day about two years ago they were giving  
7        the teachers a lot of trouble, and so the teachers  
8        said, "We quit. We're going on strike," and they  
9        walked out.

10               And the kids were so concerned that they  
11        came after the teachers and said, "What can we do?"  
12        They said, "Show us that you really want us to be  
13        here." And they sat down and wrote that poem. Every  
14        time I hear it, and I've heard it many, many times, it  
15        reminds me of why we do this.

16               In any event, the video that you saw is a  
17        good introduction to basically what we're proposing to  
18        do at the center. The center is part of something  
19        that we call an e-village. The e-village has four  
20        parts to it.

21               One is high-speed internet access in all  
22        of the units, and those residents who go on to college  
23        or get a GED, and you saw one of the people in the  
24        video, or get a job, receive a free computer and  
25        receive free high-speed internet access in their unit.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1           The second element of the e-village is the  
2           learning center, which you saw an example of it there.  
3           By the way, if you saw the layout of the learning  
4           center at Rainbow, that's going to be similar to what  
5           we're going to be doing here.

6           The learning center, really the best way  
7           to view that is that it is the hub of the wheel. We  
8           have a set of partners who will come in with us and  
9           actually run the programs in the center, educational  
10          partners who will come in and run the programs in the  
11          center.

12          In the case of Cleveland, it is Cuyohoga  
13          County Community College. Up in Connecticut, it is  
14          the University of Connecticut; it is Quinebaug Valley  
15          Community College.

16          We, with the residents and other people  
17          from the community, will be using the period of time  
18          between now and the time that we hope that the center  
19          opens, which will be in January, to have discussions  
20          with several of the educational institutions here in  
21          the District of Columbia -- and as all of you are  
22          aware, there are many of them -- to find the right  
23          partner or partners. It doesn't necessarily have to  
24          be one partner.

25          But one of the things that we want to do

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 with the learning center -- and, again, I hope you saw  
2 that in the video -- is part of what we think makes  
3 this unique is that we establish a college campus  
4 onsite. So it is not just a question of people taking  
5 courses online, and so forth. There is actually staff  
6 from the universities onsite.

7 The next part of the e-village is a web  
8 application. The web application serves two purposes.  
9 One is it's a public website, so it lets people know  
10 what programs are available at the center.

11 It also is an administrative site, has an  
12 administrative side to it, where we track all of the  
13 children, keep track of the programs and of the  
14 teachers, and so forth, so that we are able to see if  
15 what we are trying to achieve we are achieving and, if  
16 we are not, why we are not. So that is part of what  
17 the web application does.

18 The web application also serves as a way,  
19 because we have something on there called the  
20 suggestion box which is on the public side and every  
21 place else -- that's our version of "contact us."  
22 Because my experience with most "contact us" on a  
23 website is that when you bring it up, it says, "to the  
24 webmaster," and that's one problem.

25 The second problem is, if you talk about

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the programs or anything, and you do get an answer  
2 from somebody, the person who is answering you says,  
3 if you are concerned about the colors of the website  
4 or the font size, and so forth, that's my job, but  
5 you've been asking me about the program and that's not  
6 my job.

7 What the suggestion box does is it gives  
8 residents a chance to voice their opinions about the  
9 learning center. For example, in Cleveland the center  
10 is open on Saturdays, and the reason it is open on  
11 Saturdays is because the residents, through the  
12 suggestion box, said it was inconvenient for them to  
13 be there during the first set of hours that we had.

14 The final part of the e-village is  
15 partnerships. The basic idea behind partnerships is  
16 that partnerships work best when all of the people  
17 that are involved with them do what they do best. So  
18 what Vesta does best is they build housing and they  
19 manage housing. They are very, very good at that.

20 They are not educators. That's why we  
21 want to get the educational partners. That's why we  
22 get the educational partners in that we get in.

23 On the lefthand side, on the "visit our e-  
24 villages," you can see some of the centers that  
25 Charlton referred to. If you'll turn to the back, if

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 you'll go to pages 11 and 12, this is the best summary  
2 of -- or a summary, anyway -- of what we want to have  
3 happen at the learning centers.

4           So the overall notion behind the learning  
5 center is that the people who come into this -- what  
6 we want the people who come into the center to leave  
7 with, whenever they leave -- and some of them may use  
8 the center for six months; some of them may use it for  
9 a year; some of them may use it for two years. We  
10 have people that have used them for three and four and  
11 five years. There's no time limit.

12           But when they leave, our objective is for  
13 them to have choice, choice about wherever they are in  
14 their life. So if, for example, when these young  
15 people reach 18, the way I have expressed it, just as  
16 you would like for your own children when they are 18  
17 to have the choice, to have the choice about where do  
18 they go to school and which school do they go to, do  
19 they go into the military, do they decide to not do  
20 anything for a while, but that they have the choice.  
21 The only way that they are going to have that choice  
22 is by the time they are 18 they have achieved an  
23 educational level that allows them to perform in  
24 today's economy.

25           I am not as familiar, because I have just

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 spent so much of my time working in Cleveland, I am  
2 not familiar with the statistics for the District of  
3 Columbia, but in Cleveland less than one-third of the  
4 entering high school students graduate. Think about  
5 that. It is astounding.

6 When you test the students who do  
7 graduate, many of them score out at an eighth- and  
8 ninth-grade level as far as math and reading are  
9 concerned. Unfortunately for those people, they are  
10 not going to be able to compete in today's society.

11 Our objective is to give the children and  
12 the adults a chance to achieve the academic success  
13 that they need, so that they do have choice. That's  
14 basically what it amounts to.

15 I am always asked the question, I am  
16 always asked that first question, the macro one, which  
17 is, well, what do you expect to achieve? How did you  
18 measure success? The way I have put it here is that  
19 we will measure success on the basis that the children  
20 who attend the center score on an SAT test at the same  
21 level as the average student in the best high school  
22 in that region.

23 Now we are not unrealistic and we realize  
24 that for some people that is going to take longer than  
25 for others, and we realize that many people will not

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 achieve that. I wouldn't; I didn't, for example.

2 But having that as an objective we think  
3 is extremely important. The one thing we have learned  
4 is you never have to worry about the children. The  
5 children want to learn. You could see that in the  
6 video; I don't need to tell you that. Everyone knows  
7 it.

8 What they need is they need loving,  
9 caring, competent teachers, and they need a first-  
10 class and secure environment. That's what we try to  
11 make the learning centers.

12 What is laid out here are the quarterly  
13 and annual goals, how we measure things. If you look  
14 down at No. 2, the program is really very  
15 straightforward. The first thing that happens when  
16 children come in is that they are helped with their  
17 homework. The second thing that happens is, because  
18 there's been an assessment done for each one of them,  
19 they receive group mentoring in math, science,  
20 reading, and writing.

21 They then use our web application for  
22 academic training and research. If you will turn back  
23 to page 9, when we first started the learning centers,  
24 we used to use disks. As a matter of fact, the first  
25 centers we ever opened -- this is how long ago it was

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 -- they were Apple computers where the operating  
2 system was on a disk, and you had to put the operating  
3 system in on a disk.

4 So as we moved along, and our company is  
5 also a web development company, there are lots and  
6 lots of education sites on the web. The problem is  
7 not that there aren't sites on the web. The problem  
8 is there are so many of them. There are literally  
9 hundreds of them being developed each day.

10 So we built the portal that had the best  
11 education sites online. The criteria we used for  
12 determining which were the best sites is we went out  
13 to the Department of Education's gateway website. We  
14 went to the Encyclopedia Britannica. We went to The  
15 New York Times website. If we identified, if a math  
16 site appeared on all three of those sites -- for  
17 example, Dr. Math -- that became one of our best  
18 practice sites.

19 The reason that having a number of these  
20 sites is important is because different children learn  
21 differently. What this allows the teachers to be able  
22 to do is to decide which ones they want to use.

23 If you are looking at this in the upper  
24 righthand corner, in the navigation bar you will see  
25 something called "My Bookbag." This is something

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 that, if you are at home and you are working on a  
2 particular site, or at your office, and you say, "I  
3 really like that site," you can save it down in your  
4 favorites. The problem is, if you're in somebody  
5 else's office, you no longer have access to that site.  
6 So this is an online favorites.

7 So the children can save down the courses  
8 that they are working on online or the teacher can  
9 say, as in my case there would be lots of math courses  
10 in there, "These are the ones that we want you to  
11 study." That allows the student to use that either at  
12 home, in the library, or at school.

13 Finally, we go back to page 11, at the  
14 bottom. After they go through the academic tutoring  
15 and then use the web on No. 3, on No. 4 they do what  
16 they like the most. They go onto ESPN. So they may  
17 have 10 or 15 minutes of recreation on the web, MTV.

18 We use CyberPatrol and other kinds of  
19 blocking software to make sure that pornography sites  
20 and that kind of thing don't get through.

21 This page that you are looking at here is  
22 something that we give to the teachers to orient them.  
23 The last two paragraphs are important.

24 We ask that an agreement be established  
25 between the students, the parent, and the teacher that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1       lays out the mutual responsibilities. In some cases  
2       the parents don't cooperate, for whatever reasons. We  
3       have taken the position that, as long as the child is  
4       interested in cooperating and as long as the child  
5       maintains a sense of responsibility to him or herself  
6       and the other people, we proceed with the child.

7               The entire program is voluntary and it is  
8       free. If any of you have had to go out to price what  
9       this would cost, for academic tutoring of this quality  
10      it could easily cost you per child \$75 to \$100 a week.  
11      This is free. This is four hours a day of free  
12      tutoring.

13             Therefore, it is voluntary. Therefore, if  
14      someone, for whatever reason -- it's their choice --  
15      if they don't want to participate and they don't want  
16      to respect themselves and they don't share our goals  
17      about academic performance, then they are not allowed  
18      in the center. That doesn't mean we don't try to work  
19      with people, but we don't allow a few people to  
20      disrupt what many, many people want to do.

21             The final paragraph is also important.  
22      Quality is much more important to us than quantity,  
23      but in the end you don't have to worry about quantity.  
24      What we mean by that is, if it turns out that in the  
25      beginning only five or six children are interested in

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 pursuing this, that's okay with us because it will  
2 grow. It will grow over time.

3 The problem we have in Rainbow right now  
4 is, as Yogi Berra said to Joe Garagiola about a  
5 restaurant that they both used to go to in St. Louis,  
6 "Nobody goes there anymore because it's so popular."  
7 As with most things that Yogi said, there is a lot of  
8 truth on both sides.

9 So Rainbow is now so popular that we've  
10 actually run into some problems with some parents  
11 saying it used to be nice when there were only 10 or  
12 15 kids here. We like having those problems.

13 So that's the end of my presentation, and  
14 I'll be happy to answer any questions that you have.

15 CHAIRPERSON GRIFFIS: Excellent. Thank  
16 you very much, Mr. Kerry.

17 MR. STILLWELL: If there are no questions  
18 of Mr. Kerry, we will now call the project architect,  
19 Mr. Dave Goslin.

20 CHAIRPERSON GRIFFIS: Maybe a couple of  
21 quick questions. Ms. Miller?

22 VICE CHAIRPERSON MILLER: I just want to  
23 say, first of all, that sounds like a wonderful  
24 program.

25 MR. KERRY: Yes.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 VICE CHAIRPERSON MILLER: I have a few  
2 specific questions. You made reference to college  
3 campuses coming on the site. What did you mean by  
4 that?

5 MR. KERRY: Well, what we mean by that,  
6 I'll describe what we have in Cleveland. I think it  
7 will be a little different here.

8 We have an agreement with Cuyohoga County  
9 Community College, and similarly, if we work out an  
10 agreement with Georgetown or with Howard or with  
11 Southeastern University, UDC --they're making sure I  
12 cover all of the bases here, but there are a lot of  
13 them -- we will have an agreement signed with them.

14 The agreement lays out what our  
15 responsibilities are, and our responsibilities are to  
16 provide the center, to provide the security, and so  
17 forth. Their responsibilities are to provide both the  
18 instructors and also the curriculum and also to come  
19 out on the site to talk especially to the adults who  
20 have been thinking about going to college but are not  
21 sure, have not taken that step to go, no matter how  
22 convenient it is for them to get on the Metro and go  
23 to one of these places.

24 So we literally mean, if you walked into  
25 UDC -- I'm sorry, if you walked into CCC and you

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 walked into a classroom, you would see the same level  
2 of teachers that you see at the learning center.  
3 That's what we want to accomplish here.

4 VICE CHAIRPERSON MILLER: But do you mean  
5 that they would offer enough courses so that someone  
6 could get a degree by just going to your learning  
7 center?

8 MR. KERRY: No.

9 VICE CHAIRPERSON MILLER: No? Okay.

10 MR. KERRY: No. What happens is,  
11 remember, for the children we are talking about people  
12 getting educated in reading, writing, and science. We  
13 want absolutely first-class teachers either from the  
14 colleges or from the schools. But for the adults,  
15 yes, I mean they actually offer college courses there  
16 onsite. Everyone now has online courses. Then they  
17 also sign them up for courses at the particular  
18 institution.

19 But let me give you one more example.  
20 Every one of these works out differently. In  
21 Connecticut every day during the school year there are  
22 about 20 students that show up from the University of  
23 Connecticut at the Windham Heights Learning Center,  
24 which is one of the centers that you see on your list.  
25 It is the last one listed.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1                   These are young people from all over the  
2                   University of Connecticut campus who come in and  
3                   mentor the children at the campus. On Fridays all  
4                   those kids get in a bus provided by the University of  
5                   Connecticut and go to the University of Connecticut.  
6                   Each Friday they go to a different part of the  
7                   University. So at one point they will go to biology;  
8                   another time they will sit in on reading and writing.  
9                   So each one of them is different.

10                  But the idea is to take those tremendous  
11                  resources and aim them here, where they are very much  
12                  needed, and connect them up.

13                  CHAIRPERSON GRIFFIS: Excellent. Thank  
14                  you very much. I think your presentation, as Ms.  
15                  Miller said, was excellent in terms of understanding  
16                  what the program is. Obviously, it is a very good  
17                  program.

18                  Part of our requirement, of course, in 334  
19                  is to show that this would somehow impact, positively  
20                  impact, the social and economic well-being of those  
21                  participants. I think that is fairly persuasive.

22                  Let me just ask you a quick clarification.  
23                  In 334.4, I believe it is, it talks about reasonably  
24                  convenient to the neighborhood of which it is going to  
25                  serve. Is this -- and you have talked about the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 number of units that you're now acquiring, closing on  
2 shortly -- is this to serve just those units --

3 MR. KERRY: No.

4 CHAIRPERSON GRIFFIS: -- or is it opened  
5 up to the larger community?

6 You talked about it being free except for  
7 those that are rabble-rousers and they're ejected  
8 promptly. But what is the program for participation?

9 MR. KERRY: Well, let me answer your  
10 question directly. The program is open to everybody  
11 in the community. It's not just the people at the  
12 particular development.

13 The way we let people know about it, we do  
14 that in a couple of ways. First of all, once we have  
15 the education partner in hand, we and the residents --  
16 and we have asked the ANC to participate in this with  
17 us as well -- will hold a series of meetings in the  
18 neighborhood to let people know about it. That's one  
19 thing we will do. We hold open houses where we invite  
20 people to come in and sign up.

21 There's also a piece on the District's  
22 website. It's called the "City of Access," in which  
23 you can go up and search for centers like this  
24 throughout the city. So we will make sure we will get  
25 listed on that site as well. So if somebody was

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 interested, they could --

2 CHAIRPERSON GRIFFIS: Okay. So the  
3 starting area can come in -- and is there an  
4 enrollment? Do you have to show up at certain times?  
5 Is it a drop-in? How is this programmed?

6 MR. KERRY: The priority as far as  
7 enrollment is concerned is for the residents, the 180  
8 units that I talked about. After that, it will be  
9 open to the rest of the community.

10 CHAIRPERSON GRIFFIS: So if a child in the  
11 neighborhood or even at the development decides just  
12 to show up one day, is that possible or is that not  
13 what this is set up to do?

14 MR. KERRY: Well, part of the hours that  
15 we set up normally, and we will do that here as well,  
16 is we set up a time -- and it is usually on Saturday  
17 -- where we have what we call open session, where  
18 anybody can drop in, ask questions, so we get both  
19 adults and children.

20 If a child dropped in for one day, the  
21 thing the teachers would try to do would be to recruit  
22 them. It would be to try to get them to join the  
23 program.

24 But they can't just drop in intermittently  
25 because there's an agreement, because there's an

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 assessment that's done of the child, and we are  
2 measuring ourselves on the basis of how well kids are  
3 improving.

4 CHAIRPERSON GRIFFIS: Okay, that makes  
5 sense.

6 MR. KERRY: But our main objective is not  
7 to turn people away. Our main objective is to  
8 convince them that they want to participate in the  
9 program.

10 CHAIRPERSON GRIFFIS: Right. Understood.  
11 Understood.

12 Does that seem to coincide, then -- in  
13 terms of students that are in school, how are they  
14 using the facility between 10:00 and 7:00?

15 MR. KERRY: They are not using the --  
16 well, between 10:00 and 7:00, from ten o'clock until  
17 about three o'clock during the week, adults are using  
18 the program.

19 CHAIRPERSON GRIFFIS: So from 3:00 on?

20 MR. KERRY: That varies from place to  
21 place. Some places end at three o'clock, some at  
22 3:15, some at 3:45, but whatever it is, for the next  
23 three or four hours, the children can use it.

24 CHAIRPERSON GRIFFIS: Okay, anything else?

25 VICE CHAIRPERSON MILLER: Just to follow

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 up, I was just wondering if you have an idea of how  
2 many people it can accommodate, how many students at  
3 a time. I mean it sounds like in your history you  
4 haven't had to turn anybody away, but is there a  
5 certain amount of computers and teachers?

6 MR. KERRY: Yes. Well, yes. Roughly, it  
7 goes like this: This space, the learning center  
8 portion of this space is -- let me get my notes out  
9 here -- 1,222 square feet. That's the learning center  
10 portion of the space. Then the meeting room/community  
11 room is 1,016 square feet.

12 In the learning center itself there are a  
13 couple of different constraints on how many people you  
14 can handle. One constraint is the physical size,  
15 obviously. In that size space, which is similar to  
16 Rainbow and our other places, we can handle from 20 to  
17 25 children at the same time. The closer to 20 you  
18 are, the better because 25 it starts getting pretty  
19 raucous. That is one constraint.

20 The second constraint is the number of  
21 staff you have because the ratio we like to keep is  
22 somewhere like one teacher to seven pupils. So you  
23 need about three people. So if you viewed it as -- in  
24 a particular session going on at any time, you could  
25 have 20 pupils and you would have three teachers.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1                   Now there are a couple of things that we  
2                   have learned about that. When you look, for example,  
3                   at the drawing here, you will see that there are a  
4                   number of offices that are in there. One of the  
5                   reasons those offices are in there -- there are none  
6                   at Rainbow; we wish there were, but that was built  
7                   four years ago, so we have learned -- is that those  
8                   places are used for mentoring. So to the extent we  
9                   get more staff, we could accommodate more children.  
10                  But for the basic program, 20 is about the limit that  
11                  you can handle at any one time.

12                   CHAIRPERSON GRIFFIS: Good. Anything  
13                  else?

14                   (No response.)

15                   Very well, thank you very much.

16                   MR. STILLWELL: At this time we would like  
17                  to call our next witness, Mr. Dave Goslin, the project  
18                  architect.

19                   MR. GOSLIN: Thank you, Garland.

20                   As Garland said, my name is David Goslin.  
21                  I am the project architect with Crosskey Architects.  
22                  Crosskey is located at 100 Allyn Street in Hartford,  
23                  Connecticut. This is actually our fourth Vesta  
24                  property that we have worked on. We have done the  
25                  other properties up in Connecticut.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1                   They have done an excellent job explaining  
2                   what goes on here. My portion of the presentation is  
3                   to actually go over what the building is and how it  
4                   was designed and why it was designed the way it was.

5                   So if you will bear with me while I get  
6                   this thing situated?

7                   CHAIRPERSON GRIFFIS: Let me just ask you  
8                   as you are getting ready, our jurisdiction over the  
9                   building is going to be fairly limited, I suppose, but  
10                  depending on how you read the regulations, it could be  
11                  extremely broad. So the direct question is: Are you  
12                  aware of any or is it your opinion that the  
13                  development of this and its siting or any of its  
14                  aspects would potentially create an objectionable  
15                  condition to the surrounding area?

16                  MR. GOSLIN: No. Actually, to answer your  
17                  question, looking at the site plan here, to get  
18                  yourself oriented, north is to the top of the board.  
19                  The apartments, the 180 units, are located to this  
20                  side of the property. E Street comes in off of  
21                  Chesapeake and the cul-de-sac is right here. Then off  
22                  the cul-de-sac there's a 16-foot wide public alley  
23                  which extends and connects over to Barnaby Street off  
24                  to the west. There's also another 16-foot wide public  
25                  alley which comes off of 8th, wraps around our site,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 and connects into the public alley. So we are  
2 bordered by public alleys on three-quarters of the  
3 site.

4 So with that, we have a site that is about  
5 18,000 square feet. Our building itself is 4,006  
6 square feet. We've kind of juxtaposed the shape and  
7 the location of the building to fit within the 8-foot,  
8 20-foot, and the 10-foot building line setbacks. So  
9 the entire building is within the parameter of the  
10 site. We are not encroaching upon or over any of the  
11 setbacks or into the public alleys.

12 The way the building was sited is we  
13 wanted to skew it slightly for two reasons: one, to  
14 get it to fit on the site; the other one, to turn it  
15 so it addresses and it faces the apartments, so there  
16 is a frontal approach that the residents can see, and  
17 they can see clearly where the entries are.

18 That also allowed us to tuck the parking  
19 spaces off to the west side of the site, from which we  
20 got six parking spaces. I think four are required.  
21 So we have more parking than what is required. Of  
22 that, one of those spaces is handicapped accessible.

23 We don't really anticipate there being a  
24 large parking. Most of the parking here is for the  
25 staffing. There will be some parent dropoff and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 pickup, but most of the residents coming here, it's  
2 foot-dropping. So most of the traffic coming here is  
3 anticipated to be foot traffic.

4 Also, back in the corner, we are proposing  
5 a dumpster. That dumpster will have a full enclosure,  
6 a chainlink fence with privacy slats, and it would  
7 also be buffered by evergreen landscaping to kind of  
8 conceal it from view.

9 So that concludes the site. We will have  
10 sidewalks that will connect the main entries from the  
11 public alleys and the cul-de-sac.

12 As I said, the building is 4,006 square  
13 feet. It's a slab on grade. It's fully handicapped  
14 accessible.

15 The construction of the building is 2x6  
16 framing, 9-feet high, on top of which would be roof  
17 trusses, just to go over the exterior of the building  
18 components.

19 One of the concerns that you may have  
20 noticed in the presentation is that the computers for  
21 the learning center have to go to the perimeter of the  
22 learning center. So really we need low wall space to  
23 accommodate.

24 For that reason, we have high clear  
25 windows here, which allows natural light, but it also

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 provides some sense of security. So we have these  
2 high windows that wrap around the building. So the  
3 building is well-lit, the space.

4 These are photos of one of the properties  
5 up in Connecticut -- this is Mossup Gardens -- just to  
6 give you a sense of what it actually looks like when  
7 it is completed.

8 This building was completed about a year  
9 ago. The materials we used on this, the roof shingles  
10 are 30-year architectural asphalt shingles. The  
11 siding of the building, it's not vinyl siding and it's  
12 not wood siding; it's kind of a newer material, new to  
13 the market. It's called Hearty Plank, is the trade  
14 name. It is a cementitious fiber.

15 It is a wonderful material in that it is  
16 cement-based product. It doesn't rot. Insects can't  
17 get into it and it is fire-resistant.

18 The windows themselves are insulated glass  
19 vinyl windows, non-operable, just for control of the  
20 space.

21 CHAIRPERSON GRIFFIS: Is this small deck  
22 area between the pitched roofs, is that occupiable or  
23 is that decorative?

24 MR. GOSLIN: That actually is a platform  
25 for mechanical equipment.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 CHAIRPERSON GRIFFIS: Okay. So part of it  
2 is screened and then part of it just has the railing,  
3 French railing?

4 MR. GOSLIN: Yes. Basically, what we need  
5 to do here, because we are slab on grade, we do have  
6 mechanical equipment; we don't want to put it on the  
7 ground where kids can access it.

8 CHAIRPERSON GRIFFIS: Sure.

9 MR. GOSLIN: So one of the things we do is  
10 we carve a little pocket out of the roof and set it on  
11 the platform.

12 CHAIRPERSON GRIFFIS: Sure. Excellent.

13 MR. GOSLIN: That is actually accessed  
14 from within a locked room of the building.

15 CHAIRPERSON GRIFFIS: Excellent. Okay.  
16 It's an impressive building for its function and its  
17 siting.

18 Any questions you want? Mr. Etherly?

19 MEMBER ETHERLY: Thank you very much, Mr.  
20 Chair.

21 Just very quickly, Mr. Goslin, an  
22 excellent presentation. I think I have a very  
23 adequate sense of what the building looks like, but I  
24 wanted to just address a little bit the issue of the  
25 trash enclosure. Could you speak again to how you are

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 planning to enclose the dumpster at the rear of the  
2 site? You're just talking chainlink fencing or are  
3 you looking at any type of enclosure?

4 Because if I am not mistaken, do you have  
5 some site lines from residential properties at the  
6 rear of the building as well that would be looking in  
7 that direction? I see you're going to have some  
8 evergreens shading, but I just want to kind of get a  
9 sense for that fencing again.

10 MR. GOSLIN: What we have done at our  
11 other sites up in Connecticut is we have the dumpster;  
12 the dumpster is a front-loaded access so the truck can  
13 drive up and pick it up, lift it and load it.

14 So three sides of the dumpster have a 6-  
15 foot high chainlink fence with the inserts so you  
16 can't see through. There's plastic inserts, so you  
17 basket-weave through the chainlink. So you really  
18 can't see the dumpster. Then around the perimeter of  
19 that we will have evergreen landscaping.

20 MEMBER ETHERLY: Okay, excellent. That  
21 answers my question. Thank you, Mr. Chair.

22 CHAIRPERSON GRIFFIS: Excellent. Anything  
23 else then? Any other questions?

24 It is an intriguing roof pitch that you  
25 have on this. There it is. It looks like it could

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 handle a Connecticut snow load.

2 All right.

3 MR. STILLWELL: Mr. Chairman, this  
4 concludes our presentation of our case-in-chief. I  
5 would like to just note for the record we actually  
6 have three exhibits. We might as well go over them  
7 now. I would just like to have them moved into the  
8 record.

9 The first exhibit is the video clip that  
10 was played during Mr. Hamer's testimony. That is  
11 presented to you in a DVD format and includes the clip  
12 in its entirety.

13 The second exhibit is the website  
14 printouts that are in hard-copy format. That will be  
15 our second exhibit for submission.

16 Our third exhibit would be the affidavit  
17 of posting that we have ready to file that was sworn  
18 by our paralegal yesterday when he did his last check  
19 of the site.

20 CHAIRPERSON GRIFFIS: Okay, excellent.  
21 Okay. Anything else at this time?

22 VICE CHAIRPERSON MILLER: This may be for  
23 Mr. Kerry or Mr. Stillwell. I just was glancing over  
24 the written application at the same time as I was  
25 listening to everything. There are a few

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1       discrepancies between the testimony that's been  
2       presented this morning and what's in the written  
3       record. I just want to make sure I have the right  
4       information. Or maybe I am misreading it.

5               But one goes to the number of individuals  
6       that the learning center can serve at one time. Mr.  
7       Kerry said 20 ideally with three staff, and page 5 of  
8       the pre-hearing statement indicates 30 to 40.

9               MR. STILLWELL: I believe the numbers that  
10       Mr. Kerry presented were a minimum and his ideal  
11       number of students, but the full capacity is the  
12       capacity that's listed in the application.

13              VICE CHAIRPERSON MILLER: And what's that  
14       based on, the 30 to 40?

15              MR. KERRY: I was going to get into this  
16       when I was answering my question, but if you look at  
17       the space, you'll see that you have the learning  
18       center portion and then to the right you have the  
19       meeting center portion. So what happens at Rainbow,  
20       and what we're anticipating happening here, if we do  
21       get that big a crowd, that some of the functions will  
22       move off into the meeting space area. You remember  
23       when I talked about the constraints. As long as we  
24       have the staff to handle that, we have certainly got  
25       plenty of space to do it.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 VICE CHAIRPERSON MILLER: Okay, because  
2 that is what my next question is, how to interpret.  
3 In the written application it said the meeting room is  
4 something like 50 to 60. Does that include the people  
5 in the learning center or is that on top of the people  
6 in the learning center?

7 CHAIRPERSON GRIFFIS: Is that in a program  
8 or an occupancy level?

9 VICE CHAIRPERSON MILLER: Yes, what is  
10 that?

11 MR. HAMER: No, that doesn't include the  
12 people in the learning center. That's the capacity of  
13 the meeting room.

14 VICE CHAIRPERSON MILLER: Okay.

15 MR. STILLWELL: An auditorium, I should  
16 say, and auditorium-style seating.

17 VICE CHAIRPERSON MILLER: Okay.

18 CHAIRPERSON GRIFFIS: So it is a building  
19 code calculation based on no fixed tables or chairs?

20 MR. STILLWELL: Actually, I believe the  
21 building code calculation actually is higher, and Mr.  
22 Goslin can speak to that.

23 CHAIRPERSON GRIFFIS: What the number is  
24 is all we need. So it is a program number, not a  
25 code --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MR. STILLWELL: That is correct.

2 VICE CHAIRPERSON MILLER: It's a program  
3 number, the 50 to 60?

4 MR. STILLWELL: Yes.

5 VICE CHAIRPERSON MILLER: Okay.

6 MR. GOSLIN: Yes. The actual total  
7 occupant load I think is 146. That's assuming it's  
8 individual chairs and people are sitting kind of in an  
9 auditorium format.

10 CHAIRPERSON GRIFFIS: Okay.

11 VICE CHAIRPERSON MILLER: Also, I just  
12 want to make sure I understand right about who the  
13 neighborhoods are that this will be serving. I think  
14 in the letter of understanding it referred to the  
15 village and the apartment units, and it didn't go  
16 further than that, but you said here that you would  
17 make the program available to people outside of that  
18 community, is that right, within the general  
19 community?

20 MR. HAMER: Yes. I think we have in there  
21 the Village at the Chesapeake, which will be the name  
22 of the development once we acquire it. It is commonly  
23 known as Avalon and Southern Court Apartments.

24 Again, I think I stated that first and  
25 foremost the learning center will be for the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com



1 residents. Based upon capacity and enrollment, then  
2 we will open it up to the broader community.

3 VICE CHAIRPERSON MILLER: Okay, and the  
4 age of the children is kindergarten through 12, is  
5 that right?

6 MR. HAMER: Kindergarten through 12th  
7 grade, yes.

8 VICE CHAIRPERSON MILLER: Okay, thank you.

9 CHAIRPERSON GRIFFIS: Okay, let's move  
10 ahead then. If there is nothing further from the  
11 Board, let me ask, first of all, is ANC present with  
12 us today, the ANC representative?

13 AUDIENCE MEMBER: Yes.

14 CHAIRPERSON GRIFFIS: Excellent. It would  
15 be appropriate at this time if you had any cross  
16 examination questions of the witnesses, if you wanted  
17 to come up. Do you have any cross? No cross? That's  
18 fine.

19 MR. STILLWELL: I may be able to clarify,  
20 Mr. Chairman. We have three representatives from the  
21 ANC today. We have the Single Member District  
22 Commissioner, Ms. Robin Adams. We have the Chair of  
23 the ANC, Mr. O. V. Johnson, and we also have one of  
24 the Board members of the ANC who at the meeting where  
25 we received approval voted in dissent of the project.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 CHAIRPERSON GRIFFIS: Excellent, and who's  
2 here in official capacity to represent the ANC agency?

3 MR. STILLWELL: Mr. O. V. Johnson.

4 (Off-the-record discussion.)

5 CHAIRPERSON GRIFFIS: Let's get into this  
6 very quickly then. I just need to know who the  
7 representative of the ANC is today to represent the  
8 8D, and will, therefore, be able to ask and direct  
9 cross examination questions. Why don't we have you  
10 introduce yourself, Mr. Johnson, for the record.

11 MR. JORDAN: Mr. Chairman, my name is  
12 Absalom Jordan. I am Commissioner from 8D.

13 You have a letter before you. The  
14 Commission held a meeting on April the 17th. You have  
15 a copy of the agenda that was attached for that  
16 meeting. It was a continuation of a special meeting.

17 The agenda for that meeting was several  
18 things. One is to remove Mr. O. V. Johnson as Chair,  
19 and the second was to rescind the previous  
20 Commission's approval of the motion to support this  
21 development.

22 CHAIRPERSON GRIFFIS: Let's step back two  
23 seconds. First of all, I'm not sure we have what  
24 you're talking about because I don't have it right in  
25 front of me.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. JORDAN: I just gave it to Ms. Bailey.

2 CHAIRPERSON GRIFFIS: Okay. Well, that's  
3 fine. Then we wouldn't have it in front of us. She  
4 needs to put it into an exhibit and then distribute  
5 it.

6 So let me step back further, though,  
7 because all I am trying to establish right now is who  
8 is representing the ANC in order to conduct cross  
9 examination questions, if there are any.

10 Mr. Jordan, did you want to address that?

11 MR. JORDAN: Yes. I'm saying that Mr. O.  
12 V. Johnson has been removed as Chair. He was at a  
13 meeting on April the 17th at which four members were  
14 present. That was a majority of the Commission  
15 members. The meeting was called specifically to  
16 remove Mr. Johnson, and the second item was to rescind  
17 the motion to support this project.

18 CHAIRPERSON GRIFFIS: Who is here, with  
19 all of that, if that is what happened, who is here to  
20 represent the ANC then?

21 MR. JORDAN: Me.

22 MR. JOHNSON: I am.

23 CHAIRPERSON GRIFFIS: And so where do I  
24 find that, Mr. Jordan?

25 MR. JORDAN: Pardon? I just submitted it

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 to you.

2 CHAIRPERSON GRIFFIS: Oh, I see, that's  
3 going to be on that?

4 MR. JORDAN: Yes.

5 CHAIRPERSON GRIFFIS: Okay, we'll take a  
6 moment and take a look at that.

7 Let me have the next gentleman introduce  
8 himself for the record, if you would, please.

9 MR. JOHNSON: My name is Commissioner O.  
10 V. Johnson. Despite Mr. Jordan's provision for this  
11 particular project, the particular meeting he has  
12 referred to I think is incorrectly stated. It really  
13 wasn't that particular date. And, also, the provision  
14 that he is speaking of is yet to be resolved. That  
15 has been sent to the Director of the Office of ANC,  
16 Mr. Gottlieb Simon, for his ruling.

17 Because our prevailing bylaws require five  
18 Commissioners to change the bylaws in order to convert  
19 the bylaws to remove me, so that has not been  
20 established yet.

21 MR. JORDAN: Can I address that, Mr.  
22 Chairman?

23 MR. JOHNSON: Until that proof has been --  
24 until that has been met, I'm still the Chair, and I  
25 also stipulated, when I submitted the approval of this

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 project on March the 1st, which you have before you,  
2 the division of the vote was three to two in the ANC  
3 proceeding. That was the subject matter that caused  
4 the division in ANC. There was concern about a proxy  
5 vote.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. JOHNSON: Mr. Jordan wanted to vote  
8 general proxies, and the bylaw says a specified proxy,  
9 which you said for or against, and this is internal  
10 division which is --

11 CHAIRPERSON GRIFFIS: Understood, and I  
12 think that's exactly right; it is internal. First of  
13 all, as interested as we may be with all these issues,  
14 jurisdictionally we have no control over it.

15 So what I really want to do is very  
16 quickly take another case --

17 MR. JOHNSON: But I did put in the letter  
18 of support that the Chairperson and Ms. Lumpkin, who  
19 was the Chairperson of the Housing Committee which Mr.  
20 Jordan is a member of, have the opportunity to state  
21 a minority opinion.

22 CHAIRPERSON GRIFFIS: Good. So,  
23 obviously, we have some differing opinions on the ANC.  
24 So for our clarification and for our procedure --

25 MR. JORDAN: Mr. Chairman, could I just

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 clarify one point? Mr. Gottlieb Simon can't resolve  
2 the problem. He has no authority at all to -- and let  
3 me make another --

4 CHAIRPERSON GRIFFIS: Let me say, if Mr.  
5 Simon has none, we have less.

6 MR. JORDAN: You're absolutely correct,  
7 and that is why I'm saying you have been supplied a  
8 copy of the agenda at our last meeting for April the  
9 17th. Now, if you want, I have a copy of the letter  
10 that Mr. Johnson sent to Mr. Gottlieb Simon. Within  
11 that letter he indicates that there was a majority;  
12 otherwise, he couldn't have commenced the meeting.

13 MR. JOHNSON: There was a quorum of four.

14 MR. JORDAN: There was a quorum.

15 MR. JOHNSON: For our ordinary minutes.

16 MR. JORDAN: Well, I'm not going to get  
17 into that.

18 CHAIRPERSON GRIFFIS: Correct, nor are we.

19 MR. JORDAN: I'm just saying, sir, if he  
20 says there was a quorum, the quorum was for this  
21 agenda. By the way, whatever bylaws we had allowed us  
22 to remove the Chair; then it requires to amend the  
23 bylaws in order to remove him.

24 But the reality is you have before you  
25 today a letter from the Commission, a majority of the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 Commissioners at that meeting, that said we were  
2 rescinding this motion.

3 Now let me make one other point while we  
4 are here. Mr. Johnson makes the point about the vote  
5 on February the 23rd. We also raised a question about  
6 Commissioner Robin Adams' status at that meeting.  
7 That's why I want to talk to the people from Vesta,  
8 because I want to find out whether there was a  
9 relationship between them and Fleetwood Management,  
10 and then we can establish the relationship between  
11 Fleetwood Management and Mrs. Adams.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. JORDAN: But that's the nature of the  
14 questions that I want to pose.

15 CHAIRPERSON GRIFFIS: I'm glad you bring  
16 that up because that gets right to the point of why we  
17 all came up here. I'm not sure why that would be  
18 jurisdictional for us in terms of a special exception  
19 or --

20 MR. JORDAN: It's not.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. JORDAN: But I'm just saying, from my  
23 perspective --

24 CHAIRPERSON GRIFFIS: No, I understand  
25 that.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MR. JORDAN: -- we are making a record  
2 today.

3 CHAIRPERSON GRIFFIS: And I think there's  
4 a lot that needs to be resolved, and I think you're  
5 pursuing it in the correct means and process.  
6 However, for our purposes and for all those here, I'm  
7 not sure that cross examination questioning would be  
8 appropriate --

9 MR. JORDAN: Okay.

10 CHAIRPERSON GRIFFIS: -- or  
11 jurisdictional.

12 Did you have anything else to ask the  
13 witnesses?

14 MR. JORDAN: No. It's just to say, to put  
15 on the record --

16 CHAIRPERSON GRIFFIS: Okay, I think it is  
17 somewhat resolved --

18 MR. JORDAN: -- that the Commission's  
19 latest position is -- and let me say we are not  
20 opposed to the project per se --

21 CHAIRPERSON GRIFFIS: That's good, but --

22 MR. JORDAN: -- but we are not supporting  
23 it.

24 CHAIRPERSON GRIFFIS: Yes, but now is not  
25 the time, Mr. Jordan.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com



1 MR. JORDAN: Okay.

2 CHAIRPERSON GRIFFIS: Now is the time just  
3 for cross examination of the witnesses.

4 MR. JORDAN: Okay.

5 CHAIRPERSON GRIFFIS: And I understand  
6 that we don't have any cross at this point. So what  
7 I would like to do is move ahead to the Office of  
8 Planning and the governmental reports, right after  
9 which -- which they have submitted an excellent  
10 analysis -- we will go into the ANC.

11 I'm going to ask all of your patience that  
12 we would have you, sir, Mr. Johnson, that would  
13 present the ANC; I'm also going to have Mr. Jordan  
14 speak as an ANC member, and we'll get it all into the  
15 record and we'll figure out how we deal with it, but  
16 as succinctly and directly as we can, that would be  
17 great.

18 If that is amenable to you, I think let's  
19 move ahead and get into the Office of Planning. Then,  
20 for all those other people that are here, after the  
21 ANC, we'll have persons in support or opposition come  
22 up for three minutes, and we'll get you out by  
23 lunchtime, I assure you.

24 That being said, let's go to the Office of  
25 Planning.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 MR. MORDFIN: Good morning, Chair, members  
2 of the Board. I'm Stephen Mordfin with the Office of  
3 Planning.

4 The subject application conforms to the  
5 provisions of Sections 352.1 and 334 of the zoning  
6 regulations for the establishment of a community  
7 service center and that it will provide after-school  
8 programming for children and job and computer training  
9 for adults for the residents of the two adjacent  
10 apartment complexes, Avalon and Southern Court.

11 It will not become objectionable to  
12 neighboring properties because all activities will  
13 take place within the building. The hours of  
14 operation will be from 10:00 a.m. to 7:00 o'clock p.m.  
15 Monday through Friday and 10:00 a.m. to 3:00 o'clock  
16 p.m. Saturday.

17 Six parking spaces are provided as  
18 required for a 3,600-square-foot building.

19 Construction of the building will conform  
20 to all applicable municipal laws. The community  
21 center will be located within walking distance to the  
22 two adjacent apartment complexes it is primarily  
23 intended to serve, and it will be operated by a non-  
24 profit organization.

25 Therefore, the subject application is in

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 conformance with the provisions of the zoning  
2 ordinance for the establishment of a community service  
3 center, and the Office of Planning recommends approval  
4 of the application as submitted by the Applicant.

5 Also, as a point of clarification, the  
6 Office of Planning report does not reference the  
7 subject properties being located in the 700 block of  
8 8th Street Southeast.

9 Thank you.

10 CHAIRPERSON GRIFFIS: Excellent. Thank  
11 you very much.

12 No one is taking responsibility for the  
13 700 block; let me tell you that right now.

14 (Laughter.)

15 Okay, questions from the Board on the  
16 Office of Planning's report? Clarifications?

17 (No response.)

18 We do appreciate that, and also the  
19 parking calculation. Of course, we did hear from the  
20 Applicant there were four, obviously, and how you have  
21 done it in terms of that, the square footage is  
22 appropriate, six provided, and I think it is an  
23 excellent analysis.

24 If there is nothing further from the  
25 Board, I would ask if the Applicant has any cross

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 examination questions of the Office of Planning.

2 MR. STILLWELL: No, Mr. Chairman. We  
3 concur with the Office of Planning's report and we  
4 have no questions.

5 CHAIRPERSON GRIFFIS: Okay. Just to be  
6 inclusive, does the ANC on my right and my left either  
7 have cross examination questions of the Office of  
8 Planning? No cross?

9 MR. JOHNSON: Commissioner Johnson, 8D02  
10 is in favor.

11 MS. ADAMS: Commissioner Robin Adams,  
12 8D01, favor.

13 CHAIRPERSON GRIFFIS: Okay, excellent, in  
14 which case I don't have any other governmental reports  
15 sent to this application. We can move right into the  
16 ANC's report. We can start with Exhibit 24.

17 Mrs. Miller, did you have a comment?

18 VICE CHAIRPERSON MILLER: I just want to  
19 make a comment. We just got this May 8th letter, so  
20 maybe I'm missing it.

21 But our regulations require that, if  
22 someone is going to speak on behalf of the ANC, as  
23 opposed to just as a person, that it be set forth in  
24 the resolution that's voted upon that that person is  
25 authorized to represent the ANC.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1                   So, Mr. Jordan, I don't see that in the  
2 new ANC letter submitted May 8th.

3                   MR. JOHNSON: No, the resolution he has  
4 provided, made in that resolution, as a member, Ms.  
5 Soisette Lumpkin, Housing Committee, can speak; I made  
6 that provision in it, as the Chair at that point.

7                   VICE CHAIRPERSON MILLER: I'm sorry, do  
8 you want to bring our attention --

9                   CHAIRPERSON GRIFFIS: In the resolution  
10 Mr. Jordan would be able to speak as the Chair of the  
11 Housing Committee --

12                  VICE CHAIRPERSON MILLER: Which one are we  
13 talking about?

14                  MR. JOHNSON: February the 23rd.

15                  VICE CHAIRPERSON MILLER: February the  
16 23rd, that resolution, right, okay.

17                  MR. JOHNSON: Yes. Wait a minute. The  
18 resolution is dated March the 1st.

19                  MR. STILLWELL: I believe you are  
20 referring to Exhibit No. 24 in your record.

21                  VICE CHAIRPERSON MILLER: I saw that. I  
22 guess my question is, with this latest ANC letter,  
23 there is no one authorized to speak as far as I can  
24 see.

25                  MR. JORDAN: I don't have a problem with

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 not being able to speak as it relates to it. I'm just  
2 saying we have submitted that, and you have that now  
3 before you to deal with it.

4 VICE CHAIRPERSON MILLER: Okay. I didn't  
5 mean speak; I mean speak as a representative of the  
6 ANC.

7 MR. JORDAN: Well, let me just do this  
8 this way: Our bylaws say that, if the Chairman  
9 refuses to sign a letter or the Vice Chair, then it  
10 works its way on down. So that's why I was here  
11 today, because the Acting Chair, which would be Maria  
12 Powell, refused to or declined to come and testify  
13 today on behalf of this.

14 VICE CHAIRPERSON MILLER: Okay. What I  
15 want to say is, and I can see if my Board concurs with  
16 me, our regulations say, if you're going to represent  
17 the ANC, you have to have that kind of a resolution.  
18 Not that you can't speak as a person; it's just not  
19 going to carry the great weight as representing the  
20 ANC.

21 MR. JORDAN: Well, can I suggest another  
22 thing then, too? About the resolution, the resolution  
23 that was submitted by the ANC doesn't contain that  
24 statement either.

25 And the other part about it is that you

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 can look at the resolution itself and it says that,  
2 whereas Commissioner Maria Powell made a motion --  
3 this resolution was never offered by any Commissioner  
4 nor adopted. I don't know how this resolution came  
5 into existence, but there was a motion made to support  
6 this but there was never a resolution. So in that  
7 respect, we don't have anybody who can speak for us  
8 because that letter, that resolution, doesn't say who  
9 can speak for us either.

10 CHAIRPERSON GRIFFIS: Well, at the risk of  
11 making some grave error, I would like to hear from  
12 both, and then we will proceed with how and what we  
13 give great weight to in terms of whether this actual  
14 issue and element is resolved prior to our  
15 decisionmaking on it.

16 I think there are some informative  
17 provisions in the ANC regulations involved that we  
18 could look at as needed in terms of acceptance of the  
19 May 8th, but it is not timely.

20 However, as always, we will get down to  
21 the base idea of why we are here, and that is to hear  
22 factual information. So, with that, I think let's  
23 proceed.

24 I will start on my right and --

25 MEMBER ETHERLY: If I could, Mr. Chair --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Yes.

2 MEMBER ETHERLY: -- just I agree with you  
3 wholeheartedly in terms of the direction and in terms  
4 of hearing both, and that the question for the Board  
5 will be how we deal with the issue of great weight.  
6 But I will definitely emphasize, as you suggested at  
7 the outset of this, that the Board definitely has no  
8 authority or power to, shall we say, adjudicate or  
9 sort out what clearly is a division of some sort  
10 within the ANC. But I think it would be helpful to  
11 get the perspectives on the table, and then we will  
12 sort out the issue of great weight as we move forward.

13 VICE CHAIRPERSON MILLER: I just want to  
14 say I'm not in disagreement with that. I just wanted  
15 to let them know that we're not necessarily  
16 interpreting that they are representing the ANC.  
17 Thank you.

18 CHAIRPERSON GRIFFIS: Excellent. All good  
19 points.

20 Let's proceed.

21 MR. JOHNSON: I guess it's still "good  
22 morning." I'm Commissioner O. V. Johnson, and I am  
23 presenting this on behalf of ANC-8D. As of February  
24 the 23rd, I was the Chair, even if there has been some  
25 development subsequently to that date.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1           The division of the Commission arose when  
2           there was a division of the vote on this particular  
3           learning center. There are three of us in favor of it  
4           and two voted to oppose the center. The reason was  
5           not given at that particular meeting because the  
6           residents that we held a meeting for asked a question,  
7           and the dissenting Commissioners failed to answer the  
8           reason why they were voting to oppose the center.

9           However, as you will note in the March the  
10          1st resolution, I included, which would have been a  
11          part of the minutes, as required by you when we answer  
12          the Zoning Board, that the provision of the resolution  
13          provide an opportunity for myself and the Housing  
14          Committee and all members of that particular Housing  
15          Committee, which is Mr. Jordan, if they so like,  
16          because I had anticipated a dissenting opponent of  
17          this position of this particular case.

18          I ask that they be also allowed to present  
19          their part from a minority viewpoint, and I will  
20          present the majority viewpoint, which was passed on  
21          February the 23rd at a townhall meeting held for the  
22          affected area in 8D02, which is -- 8D01 rather; the  
23          meeting was held in 8D02 -- 8D01, which is  
24          Commissioner Robins' ANC.

25          All of the persons who were in attendance,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 I did not find one other person at the meeting that  
2 opposed this learning center, and I'm elated that  
3 Vesta has stepped up and offered to place a learning  
4 center in our community ahead of any other projects,  
5 or whatever, they may later on undertake.

6 Oftentimes, developers promise you that  
7 they are going to do something in the community. They  
8 do what they're going to do, and then at the end they  
9 bail out, saying, for lack of funds, they could not go  
10 any further or they couldn't give back to the  
11 community.

12 So I am wholeheartedly endorsing this  
13 learning center, and I hope that you will think  
14 favorably on this particular learning center in your  
15 ruling. Thank you.

16 CHAIRPERSON GRIFFIS: Excellent. Thank  
17 you very much. It is taken out of one of the  
18 sentences in your report that was submitted that the  
19 project would be "a valuable addition to the immediate  
20 community and bring substantial...ultimately,  
21 transform property to use that contributes to the  
22 surroundings in a substantial way...." That was the  
23 position, as you understand it, that the ANC took,  
24 okay.

25 Yes?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MS. ADAMS: Good morning. My name is  
2 Robin Adams.

3 The ANC business, I want to come to you;  
4 I lived in those apartments for four years. Two of  
5 those years I did work for the company and I was a  
6 community person, because there's 168 families, each  
7 one having three to four children. There was nothing  
8 for them to do or anything surrounding without  
9 crossing that busy Southern Avenue. You see how many  
10 kids we would have lost up there by getting hit by  
11 cars.

12 So the best next thing they do, breaking  
13 the windows. The people that owned it at the time  
14 didn't care, so it just looked rundown.

15 So I found several ways: get them a  
16 playground. I held parties. I had the Job Corps come  
17 in and hold one to get some of those boys off the  
18 corner, and they were able to help some.

19 So, finally, I decided to run for the ANC,  
20 where I thought maybe I could get some funding for the  
21 area or maybe push the people that own it to do more.  
22 That didn't really work.

23 So when Vesta did come along and  
24 approached and told us about the learning center,  
25 because before they came, they used to come in my two-

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 bedroom house. It started off with five kids in my  
2 house for a sleepover every weekend just to keep them  
3 off the street until I had fifty.

4 Out of that fifty, in my two bedrooms,  
5 some of them have died; some of them are in jail; all  
6 of them couldn't read.

7 So when they came along and they  
8 approached us saying that they wanted to bring this  
9 program, that's really, really going to help. Because  
10 some of the parents are either on drugs -- you know,  
11 the same scenario just like you saw in those pictures  
12 over there.

13 This would be the best thing because the  
14 closest things to Southern Avenue and Chesapeake is  
15 Mississippi. That's all the way up the highway.

16 Then the next center is Hawk. That's way  
17 across on another highway. So these kids haven't had  
18 anything for a long, long time.

19 So, like I said, the size of the agency  
20 mess going on right there, please let's think about  
21 these children because they have been lost in this  
22 system for the longest time. They didn't have  
23 anything, and I brought their attention to Mayor  
24 Barry, had them come out there and look. We had  
25 nothing.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1           So to turn this away from these kids that  
2 really, really need it, it would be wrong. I know  
3 some kind of way we could figure it out and work this  
4 out, because it's for the children at the end.

5           If you go to any D.C. public school, the  
6 reading level is not high at all, and it's terrible.  
7 If the parents can't read, can't nobody help.

8           At least we know they're safe and not  
9 throwing rocks. They're in the center and they're  
10 going to learn, and then they are going to be proud of  
11 where they live.

12           This is a true story. I lived there for  
13 four years. So please don't turn this down, and I  
14 thank you very much.

15           MR. JOHNSON: I only have one addition to  
16 the substance to my -- I would like to say, because of  
17 my strong support for this center and the principle of  
18 abiding by the prevailing bylaws, there are some  
19 Commissioners that wants to remove me. If that is to  
20 be, so be it. But whatever we do, I'll be for this  
21 learning center because it affects my single member  
22 district. I live next to -- my area is next to hers.  
23 So I am for this 100 percent.

24           The Committee came up, because I strongly  
25 support this, and ruled that a certain procedure was

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 out of order, and that led to the pettiness and  
2 internal fights. So thank you very much.

3 CHAIRPERSON GRIFFIS: Thank you.

4 MS. ADAMS: May I say one more thing?  
5 Also, I'm representing the other tenants that wanted  
6 to come and have been going to the Vesta meetings ever  
7 since they came. A lot of them are teachers and they  
8 couldn't come. But I am also representing them. They  
9 are much in support of it.

10 They met with them on Saturday and sat  
11 down with Mr. Kerry. He answered all their questions.

12 But the ANC, when we had a meeting, none  
13 of the ANC members that are against it could answer  
14 the question of why you don't want us to have a  
15 learning center. That question was never asked.

16 CHAIRPERSON GRIFFIS: Okay, thank you very  
17 much. We do appreciate that.

18 Let's move to you, Mr. Jordan. I'm sorry  
19 -- no, Mr. Jordan.

20 One just quick announcement and reminder:  
21 that I would ask if you have a Blackberry or a Nextel  
22 phone, if you would turn them off. It seems like it  
23 is getting some feedback with our transmissions today.

24 MR. JORDAN: Yes, thank you, Mr. Chairman.

25 CHAIRPERSON GRIFFIS: Sure.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MR. JORDAN: The question keeps coming up  
2 about why are we opposed to it. I want to state from  
3 the start we are not opposed to it. The question is,  
4 and I think some of you have raised some issues about,  
5 how do we ensure that this will do the things that  
6 they are saying it is going to do?

7 Nobody is more concerned about the kids  
8 than I am. While Ms. Adams is raising questions about  
9 the fate of the D.C. public schools, I am working  
10 every day with the superintendent and others to bring  
11 parenting centers to our ward and trying, working with  
12 the local school restructuring teams, and what have  
13 you, to try to make the D.C. public school systems  
14 able to accommodate our children.

15 So I think we need something like this,  
16 but the question is, is it going to do it or is it a  
17 hollow promise? Now let's deal with a couple of  
18 things.

19 One is that when we talk about the people  
20 who are in support of it, there are homeowners  
21 contiguous to this site who were never involved in the  
22 process. Mr. John Evans, who goes to my church, who  
23 lives in a home right next to this site, was never  
24 involved. So what I am saying is we wanted a process  
25 that brought all the community together, so that they

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1       could have a voice.

2               The second thing, when we looked at this,  
3       because we keep talking about all the kids, all the  
4       kids, if you will look at the apartments now, you see  
5       many of the people have been put out of those  
6       apartments. Many of those units are vacant.

7               We raised the question with Mr. Hamer at  
8       that meeting in February, have they met the  
9       requirement in terms of residents, because they say,  
10      "We're in the process of buying" or at least  
11      supposedly they own them. So we said, well, did you  
12      meet the right-of-first-refusal requirement? "Yes, it  
13      was waived," he said.

14              We have talked to the Department, I mean  
15      the D.C. Housing Finance Agency staff there, because  
16      pending before them is an application for funding.  
17      What they told us was that they have held up that  
18      application because they have not received from DCRA  
19      assurances that the right-of-first-refusal was offered  
20      to all the residents.

21              So what we are saying is we don't want to  
22      do the zoning and then at some point the financing  
23      falls through for the housing, and then there is no  
24      assurance that this is going to be built. Because if  
25      Vesta doesn't get the housing loan, and if they can't

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 rehab those units, then there's no incentive for them  
2 to build.

3 The second thing that we were concerned  
4 with -- and Mr. Hamer knows that we have raised this  
5 question, and he was vague about it today, but then he  
6 answers it. We want a firm commitment so that it's  
7 open to the community, not exclusively for just the  
8 180 folks in that unit. There has to be some  
9 provision. If, in fact, it's going to benefit the  
10 community, as he says, then we were trying to get some  
11 kind of formula, some commitment, because the children  
12 who are going to be moving back into that site may not  
13 be the kids who need to be in there.

14 The children who are in areas contiguous  
15 with that site may need it more than the children who  
16 will be living there. So we were trying to get some  
17 kind of commitment from them to say, "Look, we will  
18 assure that we're going to give you 'X' number of  
19 spaces in here." Then we could really feel that it  
20 benefits the community, because now it only benefits  
21 a few people.

22 But the first questions is: Where are  
23 they in terms of the housing financing? Can they  
24 assure us, because they've stated earlier today that  
25 they're in the process of settling on it. Well, we

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 want some assurances that the housing is going to be  
2 rehabbed and that, if it is going to be rehabbed,  
3 then, yes, this is a good idea to have a center.

4 I am tired of people trying to say that  
5 just because you raise some questions in a meeting  
6 that you are opposed to something. No, you want to  
7 clarify.

8 And let me make one last thing because our  
9 Commission has been dubbed before. You know, we were  
10 here a couple of years ago with Danbury Street. We  
11 were told initially that housing there was going to be  
12 \$165,000 to \$185,000. Housing there on Danbury Street  
13 now is \$350,000. We were lied to. We had a  
14 memorandum of understanding. It was eviscerated.

15 So we don't want to go through the same  
16 thing again. We are trying to get at the front end  
17 some commitments from Vesta: one, to let people from  
18 the larger community in there and, two, to make  
19 certain that they're going to get the dollars to rehab  
20 this place, to ensure that it will be, in fact,  
21 affordable housing.

22 CHAIRPERSON GRIFFIS: Excellent. Thank  
23 you very much, Mr. Jordan. I think those are  
24 excellent points.

25 MR. JORDAN: Can I just make one last

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 point, though?

2 CHAIRPERSON GRIFFIS: Sure.

3 MR. JORDAN: The meeting of April 17th was  
4 an official meeting.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. JORDAN: It was duly called. Mr.  
7 Johnson sent out the notice of the meeting. It was  
8 not a regular meeting. It was a continuation of a  
9 special meeting, because the law says that when enough  
10 Commissioners file, he had a responsibility to call a  
11 special meeting within 30 days. So I am just saying  
12 the D.C. Code required a meeting to be held for  
13 removal of the Chair.

14 There was a quorum at that meeting, and  
15 the action was taken. So you can't resolve that, but  
16 I'm just saying in terms of looking at our viewpoints.  
17 I wish all the Commissioners were here.

18 CHAIRPERSON GRIFFIS: Sure.

19 MR. JORDAN: But the first argument is,  
20 why are you opposed to it? If they would listen  
21 sometimes, they would understand people are not  
22 necessarily opposed, but they want certain protections  
23 and certain commitments assured.

24 CHAIRPERSON GRIFFIS: Well, and I think  
25 your position here today is very clear, Mr. Jordan.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 I appreciate your bringing it down.

2 Two things: First, I don't want to raise  
3 your expectations too high of how much jurisdiction or  
4 control or power we have. I think you bring up an  
5 excellent point of, how much assurance do you have to  
6 make sure this happens, and happens correctly? Our  
7 jurisdiction will begin and end in the zoning  
8 regulation.

9 So what they can show us or not,  
10 obviously, is what we will be ruling on, meaning the  
11 housing financing or any of their financing, I'm not  
12 sure that I can find anything in the regulations right  
13 now that would stop us from not processing this  
14 application, but I think it is an excellent point to  
15 bring up.

16 Let me just bring some clarification  
17 because you're throwing around community a lot.  
18 Aren't the 180 units going to be part of the  
19 community?

20 MR. JORDAN: Sure, but there are also some  
21 people who live right next door to it.

22 CHAIRPERSON GRIFFIS: Right.

23 MR. JORDAN: And their children will be  
24 excluded. See, how can they say --

25 CHAIRPERSON GRIFFIS: And I think that's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 an excellent point.

2 MR. JORDAN: -- that it benefits the  
3 larger community? It's going to be a part of the  
4 community. Then you isolate yourself as if you --

5 CHAIRPERSON GRIFFIS: Well, if it's full,  
6 if the classroom is full, but if the classroom is full  
7 and the center is being used, isn't it serving the  
8 community?

9 MR. JORDAN: Sure, but there's an  
10 assumption that if it's full --

11 CHAIRPERSON GRIFFIS: No, I understand  
12 that. And I think you made an excellent point: So  
13 all these folks that move back into the apartments  
14 maybe they all have Ph.D.s and they don't need this.  
15 When does it open up? And I think we can get some  
16 clarification for that, because I think I haven't  
17 heard anything today that would lend me to believe  
18 that this is just to be a quiet, maybe underutilized  
19 is really the goal. No, it seems to me that the goal  
20 of this is to make it very utilized, so they're going  
21 to find the people that need it.

22 MR. JORDAN: Can I make one other point?

23 CHAIRPERSON GRIFFIS: Sure.

24 MR. JORDAN: There's a question about  
25 staffing: Where's the funds coming from for the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 center? Nobody has talked about that. Those are the  
2 kind of things we wanted to vent out at the ANC  
3 meeting. When we tried to raise these questions, they  
4 weren't always answered.

5 So I'm just saying to you, they could say  
6 that 10 percent of the slots will go to the community.  
7 They could say 15 percent. Then there wouldn't be a  
8 problem of ensuring -- rather than saying, "if we have  
9 some space," "if we don't use up all the space," do  
10 you understand?

11 I'm saying to you right now that the  
12 homeowners who live contiguous to that site are going  
13 to be impacted by that center. Why should their  
14 children be denied access to it if it is supposed to  
15 benefit, quote, "the community," unquote?

16 CHAIRPERSON GRIFFIS: I understand. Okay.

17 Any other questions from the Board?

18 VICE CHAIRPERSON MILLER: I have a comment  
19 and a question.

20 I just want to say, first of all, I  
21 certainly understand your point about the community  
22 that's there now, the children that are there now, and  
23 whether that will serve them. That was one of the  
24 areas that I was trying to resolve myself.

25 I just want to make a constructive

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 suggestion to your ANC, so that you don't run into  
2 problems in the future where we are questioning who's  
3 representing the ANC. We have it in our regulations,  
4 the specific requirement, but two that seem to be  
5 lacking here.

6 One was, who is authorized, not to dwell  
7 on this? Then the other one I didn't see in this  
8 letter was the notice to the community, because that's  
9 also important. If there's a meeting held but we  
10 don't know that the community had notice, how much  
11 weight can we give that?

12 So I just wanted to bring it to your  
13 attention for the future, and I appreciate the remarks  
14 you made. Regardless of whether they represent the  
15 ANC or not, I think they were good points for us to  
16 hear and consider.

17 CHAIRPERSON GRIFFIS: Excellent. Anything  
18 else? Mr. Etherly?

19 MEMBER ETHERLY: Not necessarily as a  
20 followup for the ANC, I appreciate the presentations  
21 on the part of all three Commissioners, and I think I  
22 have a fairly decent sense of kind of where we are  
23 there. This question is perhaps addressed back to Mr.  
24 Stillwell because, as you probably are aware, attached  
25 to Exhibit 24 there is a letter of understanding that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 is referenced, and Commissioner Jordan did reference  
2 it as well. So I just wanted to get a sense from the  
3 Applicant as to where the Applicant is presently with  
4 the issue of a letter of understanding of some type  
5 with the ANC. Is the document that we have attached  
6 to Exhibit -- that's your letter of understanding?

7 MR. STILLWELL: Am I on mic? I believe  
8 I'm on mic.

9 But that is the letter of understanding.  
10 In that same exhibit, if you look at the "whereas"  
11 clause, it states the sequence of meetings. At the  
12 meeting of January 12th -- I should say a work session  
13 -- we met with the ANC, and it was specifically  
14 requested that we draft and submit a letter of  
15 understanding. That was done subsequently and was  
16 included in your exhibit attached with the letter of  
17 support and was discussed at the ANC meeting of  
18 February 23rd, 2006.

19 So at that meeting of February 23rd, 2006,  
20 each of the ANC Commissioners had received hand-  
21 delivered, at least for the Chair and the Single  
22 Member District Commissioner, and at least mailed  
23 individually to the others, that letter of  
24 understanding. So it was available for discussion at  
25 that meeting.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com



1 CHAIRPERSON GRIFFIS: Okay, thank you.

2 MEMBER ETHERLY: Thank you, Mr. Chairman.

3 MR. JOHNSON: May I add one thing, sir?

4 CHAIRPERSON GRIFFIS: Yes, sir.

5 MR. JOHNSON: This first came to the  
6 agency on December the 15th to introduce Mr. Jordan,  
7 as it said in the working session, which was on April  
8 the 17th. We'd only had the meeting April 23rd (sic),  
9 but on December the 15th at the working session they  
10 introduced the project. On January the 12th we called  
11 them for a working session for the Commission only,  
12 where we sat down and we would go over the issues.

13 Mr. Jordan had said early on the principle  
14 of development. He had from December 15th to January  
15 the 12th, from January the 12th to February the 23rd,  
16 to develop whatever he thought was the principle of  
17 development. It never occurred and the issue was  
18 never raised until after the vote on February the  
19 23rd. I think it was raised on March the 23rd.

20 If he had those issues early on, he had  
21 over 60 days to deal with that. So I guess the vote  
22 surprised him to the point, but he should have raised  
23 those issues. There was plenty of time. Once we went  
24 to the community and after a little understanding had  
25 arisen, after the January the 12th working session,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 that's when we asked all the questions that we had on  
2 tap that particular evening.

3 Now if we had any additional questions, we  
4 could have raised them after the letter of  
5 understanding, which was introduced on February the  
6 17th, at the February the 23rd meeting.

7 CHAIRPERSON GRIFFIS: Excellent. I  
8 appreciate that clarification and chronology, but,  
9 obviously, we have all the testimony that is in. I  
10 don't want to get back into the chronology of this.

11 MR. JORDAN: I just want to clarify one  
12 point, though. I never mentioned anything about the  
13 principles of development. The second thing is all of  
14 us did not receive the letter of understanding.

15 We have a Committee of Housing. The Chair  
16 is Soisette Lumpkin. The developer, Mr. Stillwell and  
17 others, should have been working through her.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. JORDAN: And they didn't do that.

20 CHAIRPERSON GRIFFIS: You have the letter  
21 of understanding now, though, correct?

22 MR. JORDAN: Yes.

23 CHAIRPERSON GRIFFIS: Okay, good.  
24 Excellent.

25 All right, thank you all very much. We do

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 appreciate it.

2 I am going to ask if the Applicant  
3 representative has any cross examination questions of  
4 any of your testimony.

5 MEMBER ETHERLY: No, sir.

6 CHAIRPERSON GRIFFIS: Excellent. Thank  
7 you very much. Then thank you. I do appreciate  
8 everyone's being out here.

9 At this time, then, let's move ahead to  
10 persons that are present that would like to provide  
11 the Board testimony. Anyone that would like to speak  
12 to this application 17464, if you would come forward  
13 at this time, persons in support or in opposition.  
14 Let's fill up all the chairs. We have five available.  
15 For the added cost, we can add another chair in.

16 (Laughter.)

17 Okay, two. Excellent. A very good  
18 morning to you.

19 MS. SMITH: Good morning. My name is  
20 Dorothy M. Smith, and I live at 821 Chesapeake Street  
21 in Southeast Washington, D.C.

22 CHAIRPERSON GRIFFIS: Excellent. Thank  
23 you. Welcome, Ms. Smith.

24 MS. SMITH: Well, thank you.

25 I'm here representing the Chesapeake

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Street block along with my neighbor, Mr. Carthone  
2 Richard Carthone.

3 My concern is I do not, I have no problems  
4 with the center itself. I have problems with the  
5 location.

6 Where they are going to put the center is  
7 right in the back of my house. I'm concerned with the  
8 neighborhood being overcrowded because most of the  
9 people in my block don't have children. I love  
10 children. I have children. I have grandchildren. I  
11 have great grandchildren. But what I am saying is, if  
12 they're going to have all these people coming in from  
13 throughout the area, it's going to be overcrowded.  
14 There's going to be no place to park. All these  
15 things are going to be our problem right there on  
16 Chesapeake Street.

17 Now Mr. Johnson, who is adamant about the  
18 center, lives six blocks away. It's not going to  
19 affect him.

20 Then I don't know where the other people  
21 live at ANC, but we're concerned about our  
22 environment. We were not notified. The only letter  
23 I got was this letter, I guess from your Department,  
24 stating that you would be having this. I have not  
25 received a letter, not a telephone call. ANC has not

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 sent us anything.

2 So we don't need people to speak for us.  
3 We can speak. We have a right to vote for the things  
4 that we want in our neighborhood because we pay tax  
5 just like they do.

6 I do not understand how ANC can come in  
7 here and say they have decided that they're going to  
8 do what they want to do with my area. I don't  
9 understand that.

10 CHAIRPERSON GRIFFIS: Sure.

11 MS. SMITH: At least give me the  
12 opportunity to say yes or no whether I want something.

13 Now the center is a good idea. Put it  
14 someplace else. We're already congested where we are.

15 CHAIRPERSON GRIFFIS: Excellent.

16 MS. SMITH: Thank you.

17 CHAIRPERSON GRIFFIS: Thank you very much.  
18 Just to be clear, this is your opportunity, so we're  
19 so glad that you took it and came down and spoke to  
20 the Board because we'll be making a decision. Of  
21 course, ANC plays an important role in filling the  
22 record, but it is just one of those aspects that the  
23 Board will deliberate on.

24 So I understand that you are perhaps a  
25 little disappointed that you weren't involved in the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1       ANC's --

2                   MS. SMITH: Right.

3                   CHAIRPERSON GRIFFIS: But here you are  
4       able to address the Board, and we have obviously heard  
5       your concerns with the placement of this center  
6       actually being in proximity to your residence and how  
7       it might, in fact, increase the parking or the lack  
8       thereof --

9                   MS. SMITH: Right.

10                  CHAIRPERSON GRIFFIS: -- in the area.

11                 What is your understanding of if the  
12       majority of the people that utilize this center came  
13       from the adjacent development or redevelopment of the  
14       apartments? Would that change your understanding of  
15       the density or use of that area? Would it lessen the  
16       impact for you?

17                 MS. SMITH: I'm not sure of that. How can  
18       you have a center come into a neighborhood and limit  
19       the children that are going to attend it? How can you  
20       do that?

21                 CHAIRPERSON GRIFFIS: I'm not sure it  
22       would be limit, but, rather, where the kids would be  
23       coming from and whether that would have an impact. In  
24       your understanding, what impact would that be if they  
25       were walking across from the apartment buildings?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 MS. SMITH: That would be an impact.

2 CHAIRPERSON GRIFFIS: Okay, and what is  
3 the impact, just for my understanding?

4 MS. SMITH: I'm not sure because I'm not  
5 sure of the age limit. Then, there again, we don't  
6 know who's going to move back into those apartments  
7 after they have refurbished. We don't know that. It  
8 might be families with no kids. So why is that  
9 building going to be sitting there?

10 Now another thing I don't like, I don't  
11 like the material they're putting in that building.  
12 Those houses are brick houses. What is that stuff  
13 that he's talking about that he's going to build it  
14 with. Do you know what I'm saying?

15 CHAIRPERSON GRIFFIS: Uh-hum.

16 MS. SMITH: That's going to take away from  
17 our area.

18 CHAIRPERSON GRIFFIS: Understood. Okay.  
19 Something of that nature, then if you looked at the  
20 diagram that was actually just put back up and you see  
21 the trees, do you think that the trees at all, as  
22 they're proposed, add any sort of screening or buffer  
23 to your residence?

24 MS. SMITH: You know another thing, too,  
25 is we have been told that we are going to do certain

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 things. Then once it's approved, the contractors come  
2 and do what they want to do or either they don't do  
3 anything.

4 CHAIRPERSON GRIFFIS: Sure, sure.

5 MS. SMITH: So I'm not sure.

6 CHAIRPERSON GRIFFIS: I can tell you that,  
7 if we approve for a plan, that they'll build it, if  
8 they build it. I'm not saying that we'll force them  
9 to build it, but they won't vary if there are  
10 specifics that we look at, as it would tend to  
11 decrease an objectionable condition.

12 MS. SMITH: Okay.

13 CHAIRPERSON GRIFFIS: Okay. Well,  
14 excellent, Ms. Smith. I do appreciate your taking the  
15 opportunity to come here. As I said, I think this is  
16 the point that is of most critical value as it  
17 pertains to the zoning issues relating to this center.  
18 So we appreciate your being here.

19 MS. SMITH: And thank you so much for  
20 listening.

21 CHAIRPERSON GRIFFIS: Certainly.

22 Yes, sir?

23 MR. CARTHONE: Yes, my name is Richard  
24 Carthone, Sr. I live at 827 Chesapeake Street,  
25 Southeast.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 All of the concerns that Ms. Smith has  
2 spoken definitely are mine as well. I, too, I'd say  
3 I've been a long-time resident of Chesapeake. As a  
4 matter of fact, come June, 44 years. I've heard  
5 people say they've been in the area for five, six,  
6 whatever. Forty-four years.

7 I, too, was not contacted by the ANC.  
8 People are just overlooking the long-time residents  
9 altogether.

10 As she said, this building, I definitely  
11 have no problem with education, definite. I have  
12 children. On a heart, there's no problem whatsoever  
13 with that, but the location again is my concern  
14 because it would be, the proposal would be right  
15 somewhat in the back porch. So that's my concern  
16 there again, too.

17 But everything that Ms. Smith said I think  
18 I would agree with that to be my major concern.

19 CHAIRPERSON GRIFFIS: Excellent,  
20 excellent. Thank you very much. Again, we also  
21 appreciate your taking the time to be down here to  
22 give us your testimony in person.

23 May I ask if there are any questions from  
24 the Board at this time? Yes, Mr. Parsons?

25 MR. PARSONS: I really appreciate

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 testimony. It is very helpful.

2 What other alternative use of this  
3 property would be compatible to your use? It is just  
4 now an open lot, I guess, that is used in some fashion  
5 by the community. Maybe you just look at it; I don't  
6 know, but I'm trying to get a better understanding as  
7 to your view of the existing condition and your view  
8 as to what else should be built here instead of this.

9 MR. CARTHONE: I'm not certain exactly  
10 what, but I'm just thinking. There would be a massive  
11 building back here that we would have to look at. So  
12 I just don't know what could be placed there. I don't  
13 know what would be an alternative.

14 But I was thinking in terms of alternative  
15 for a building around the corner on Barnaby Street.  
16 I know it would have to be cleaned off some, or  
17 whatever, but rather than right close to somebody's  
18 house.

19 MR. PARSONS: So if somebody was to  
20 propose houses here similar to yours backing up to  
21 yours, would that be objectionable?

22 MR. CARTHONE: I'm sorry?

23 MR. PARSONS: If somebody was to propose  
24 to build houses here similar to yours backing up to  
25 your rear yard, would that be a better use?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 MR. CARTHONE: I would have to see it.

2 MR. PARSONS: So you really haven't  
3 thought about it?

4 MR. CARTHONE: I really don't know as of  
5 now.

6 MR. PARSONS: Okay.

7 MR. CARTHONE: I just don't have an answer  
8 for that.

9 MR. PARSONS: So in your view, I guess,  
10 leaving it the way it is is probably preferable?

11 MR. CARTHONE: Again --

12 MR. PARSONS: After 44 years, pretty good,  
13 huh?

14 MR. CARTHONE: Well, not that bad, but  
15 when I first moved there, all the population were not  
16 there. I'm saying we're being completely enclosed as  
17 time goes on.

18 MR. PARSONS: I understand. All right.

19 MR. CARTHONE: So I'm not certain.

20 MR. PARSONS: Thank you.

21 CHAIRPERSON GRIFFIS: Good. Thank you.

22 Do you want Ms. Smith to respond to that?

23 MR. PARSONS: Could you respond to that or  
24 haven't you -- if you haven't thought about it --

25 MS. SMITH: Well, when we had children --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 my children are all gone -- when we had children,  
2 they would use that place to play softball or  
3 whatever, activities they had. It was ideal for that.

4 It's not a large place. I cannot  
5 understand why you want to crowd it out like that in  
6 the first place, but, anyway, you asked about, what  
7 would I think? I would think it would be ideal for  
8 anyone that wanted to have their children play.

9 On the opposite side from where I am they  
10 have a little playground like, but a lot of the kids  
11 ride their bikes back there and do little things, you  
12 know. It's ideal for that, but not for a building.

13 MR. PARSONS: Thank you.

14 MS. SMITH: You're welcome.

15 CHAIRPERSON GRIFFIS: Excellent. Thank  
16 you very much.

17 Good question, Mr. Parsons.

18 Are there any other questions from the  
19 Board?

20 (No response.)

21 Does the representative have any cross  
22 examination of the witness?

23 MEMBER ETHERLY: No, Mr. Chairman.

24 CHAIRPERSON GRIFFIS: Very well, thank you  
25 both very much again.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MS. SMITH: Thank you.

2 CHAIRPERSON GRIFFIS: We do appreciate  
3 your coming down. It's important to hear testimony on  
4 all sides and to bring to the Board's attention any  
5 potential or actual objectionable conditions that  
6 might arise.

7 That being said, let me ask if there's  
8 anyone else here either in support or in opposition to  
9 Application 17464, and if they would come forward at  
10 this time.

11 (No response.)

12 Not noting any other individuals present,  
13 we'll turn it over to Mr. Stillwell for closing  
14 remarks.

15 MR. STILLWELL: Yes, Mr. Chairman. I can  
16 do this a couple of different ways. I was going to  
17 bring Mr. Hamer back up just to clarify a couple of  
18 points that were raised.

19 CHAIRPERSON GRIFFIS: Do you have a  
20 follow-up question? Why don't you launch the follow-  
21 up questions, too, so we can address them?

22 VICE CHAIRPERSON MILLER: Maybe he was  
23 planning on addressing them anyway, but one is -- and  
24 I addressed this before, and I just want to revisit it  
25 -- the question about access of children in the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 community who are there now to the center. Because  
2 the way our regulations read is that it is supposed to  
3 serve the neighborhood which it is in, and how big  
4 that is. I'm not reading that exactly, but I think  
5 that's a very legitimate concern. I think that the  
6 interest of your group is very laudable.

7 So we have a community and you're coming  
8 into the community and you're doing great stuff, but  
9 then the kids that are there maybe now won't be able  
10 to use it; maybe they will. I mean it sounded like it  
11 depends on space availability.

12 But I'm wondering if you can really give  
13 any assurances that this will be accessible to  
14 children who are in the neighborhood now.

15 MR. HAMER: Well, let me say this: It  
16 will definitely be for the children of the community,  
17 of which Avalon and Southern Court are a part of that  
18 community.

19 Again, we are acquiring Avalon and  
20 Southern Court. First and foremost, this building  
21 will be for the residents of Avalon and Southern  
22 Court.

23 Again, we do have capacity issues. If  
24 those issues are not a problem, then it would be  
25 opened up to the children of the broader community.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 But, yes, to answer your question, the community  
2 center will be for the community.

3 VICE CHAIRPERSON MILLER: And there was  
4 question -- we don't have any authority over the  
5 housing aspect of this, but if the public housing fell  
6 through for some reason, would the learning center  
7 still go forward, or there's no question that the  
8 housing is going to fall through?

9 MR. HAMER: Well, we have in many cases  
10 with affordable houses, which this is, affordable  
11 rental houses, we have layered financing. We have  
12 conventional lenders for construction loans. We have  
13 been working with D.C. Housing Finance Agency, to  
14 which we submitted an application last August. We  
15 received an eligibility resolution in late February,  
16 and we're scheduled to close with the D.C. Housing  
17 Finance Authority in June.

18 Again, with the Housing Finance Authority,  
19 we're utilizing tax-exempt bonds, 4 percent low-income  
20 housing tax credits. Again, we are scheduled to  
21 close.

22 VICE CHAIRPERSON MILLER: Thank you.

23 CHAIRPERSON GRIFFIS: Anything else?

24 (No response.)

25 Okay, let's get a quick rebuttal.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MR. STILLWELL: Yes. Mr. Chairman, Mr.  
2 Hamer was going to address exactly -- I was going to  
3 have him address the very issues that Commissioner  
4 Miller presented to him.

5 With that, I would just like to respond to  
6 a couple of references in the record. Mr. Jordan  
7 indicates, for example, that Mr. John Evans never  
8 received notice. I would just like to put into the  
9 record that in your Exhibit No. 7 is the 200 property  
10 owners list. On the third page Mr. John B. Evans is  
11 listed.

12 In addition, it is my understanding that  
13 it was announced during, and I would say it was  
14 announced during the ANC meeting of February 23rd,  
15 that notice for that meeting was specifically hand-  
16 delivered to the adjacent property owners, which I  
17 believe would also include Mr. Evans.

18 Now with regard to the adjacent property  
19 owners, they have received due notice, as required by  
20 the zoning regulations, and I believe additional  
21 notice beyond the posting based upon some of the  
22 activities as announced by the ANC.

23 So with that, I don't know what more we  
24 could have done with regard to addressing concerns  
25 that may have existed with the residents if they were

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 not brought to us, or at least to the ANC and, in  
2 turn, brought to us.

3 I would also like to point out that Vesta,  
4 on the issue of the learning center -- and, again, we  
5 first went to the ANC regarding our special exception  
6 application for the learning center. We have met  
7 extensively with the learning center, and even the  
8 minutes which reflect the meetings from December  
9 through present do not pick up all of the meetings  
10 that Vesta and Vesta representatives have had out in  
11 the community, but to emphasize for the learning  
12 center or the community center application, which is  
13 before you now, there has been extensive consultation  
14 with the Advisory Neighborhood Commission, the  
15 Commissioners, and the residents.

16 Even in the record presented today,  
17 everyone has indicated that they have no opposition to  
18 the learning center, but there are external issues  
19 that I believe this Board doesn't have the  
20 jurisdiction to deal with that they have questioned.  
21 Those questions will be resolved in other forums.

22 But I would like the record to reflect  
23 that even Mr. Jordan indicated he does not oppose the  
24 learning center, and no one at any of the ANC meetings  
25 has stood up and opposed the learning centers.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1                   With regard to how you determine where to  
2                   apply the great weight, again, I'm not going to get  
3                   into the internal grievances of the ANC, but the  
4                   Applicant's position is we have done what is required  
5                   of us by law. That is to confer, consult, and to seek  
6                   advice from the ANC, which we have done extensively  
7                   and which is well-documented by letters of support in  
8                   Exhibit No. -- bear with me a second -- Exhibit No. 19  
9                   in your record, which would be a letter of support  
10                  from Single Member District Commissioner Robin Adams,  
11                  and then in your record No. 24 which is the letter of  
12                  support with the resolution of the vote by Chairman O.  
13                  V. Johnson.

14                 That also includes a letter of  
15                 understanding that we were required to present to the  
16                 ANC, pursuant to the work session I had mentioned  
17                 earlier.

18                 With regard to the Code requirements, I  
19                 believe the record has indicated that there has been  
20                 no evidence indicating a detrimental effect to the  
21                 community. In fact, I think just the opposite has  
22                 been presented. We hear very frequently we need  
23                 programs to bridge the digital divide. This is  
24                 exactly the type of program we believe addresses that  
25                 need, and we believe that it is consistent and is not

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 inconsistent with any of the regulations, of the  
2 zoning regulations specifically for special exception  
3 approval for a community center.

4 Having said that, unless this Board has  
5 any specific questions, I request approval of this  
6 application and I daresay, based upon the fact that  
7 the record indicates by all parties that they have no  
8 opposition to the center, to this application, I  
9 request a bench decision.

10 CHAIRPERSON GRIFFIS: Very well. Thank  
11 you very much. We do appreciate that.

12 I do believe the record is full. I don't  
13 think we need to keep the record open for any  
14 additional information.

15 However, with the time constraint, it is  
16 noon and we have one more case to go -- we have taken  
17 a lot of time on this one -- with good reason to do  
18 so, let me ask first if there's any followup.

19 (No response.)

20 If there are no last comments or follow-up  
21 clarifications from the Board, I am afraid that we  
22 would set this for a decision, just for the time  
23 constraints that we have. I would like to do that as  
24 quickly as possible. Let me hear from others, but I  
25 think that would be on the 6th of June at our

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 regularly scheduled public meeting.

2 MEMBER ETHERLY: I would agree with that  
3 course of action, Mr. Chair.

4 I think the ANC piece is something that  
5 perhaps the Board is going to have to talk through,  
6 not necessarily in great detail, but in some detail,  
7 just to at least sort it out clearly in the course of  
8 deliberation. Rather than kind of trundle through  
9 that now, I think it would be most appropriate to set  
10 it all for a decisionmaking, do it expeditiously, as  
11 you noted, with a June decision date, rather than  
12 working it out today.

13 CHAIRPERSON GRIFFIS: Excellent. Thank  
14 you very much.

15 Any other comments, questions, concerns of  
16 setting that for the 6th from the Board?

17 (No response.)

18 Okay. Let me ask, then, the last followup  
19 on Exhibit No. 19 in your recent submission or latest  
20 submission, it's the site plan, which is the same as  
21 the Board here --

22 MR. STILLWELL: That is correct.

23 CHAIRPERSON GRIFFIS: Let me just get a  
24 quick clarification. The testimony in this is showing  
25 that it is actually surrounded on three sides by an

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 alley?

2 MR. STILLWELL: That is correct.

3 CHAIRPERSON GRIFFIS: One is 16-foot and  
4 the other is approximately the same size? Is that  
5 correct?

6 MR. STILLWELL: That is correct.

7 CHAIRPERSON GRIFFIS: So perhaps about 16  
8 feet and then, of course, from the public right-of-  
9 away --

10 MR. STILLWELL: Yes. And, Mr. Chairman,  
11 I believe the alley widths are also referenced in  
12 Exhibit No. 7, which is the Surveyor's Platt.

13 CHAIRPERSON GRIFFIS: In the platt, right,  
14 exactly. Very well.

15 MR. STILLWELL: I'm sorry, our Exhibit  
16 number is 7 in the application package.

17 CHAIRPERSON GRIFFIS: Good. I don't have  
18 any other questions for the application.

19 Is there anything else from any of the  
20 Board members?

21 (No response.)

22 Ms. Bailey?

23 MS. BAILEY: Sorry, Mr. Chairman.

24 CHAIRPERSON GRIFFIS: Yes.

25 MS. BAILEY: Is it possible to get

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 clarification of the address before the decision or is  
2 that not necessary?

3 CHAIRPERSON GRIFFIS: I'm not sure that  
4 would happen in the time before June, is my  
5 understanding as to when you would pick an address.

6 MR. STILLWELL: It was my understanding  
7 that what happened, after the fact, but my  
8 understanding now is that there is no fixed address  
9 for this property.

10 CHAIRPERSON GRIFFIS: Okay, I think we're  
11 just going to run it with the lot and square --

12 MS. BAILEY: The lot and square.

13 CHAIRPERSON GRIFFIS: -- for the official  
14 site of this. Very well.

15 MR. STILLWELL: Mr. Chairman, the last  
16 thing is I just want clarification that the three  
17 exhibits that we have submitted have been accepted  
18 into the record.

19 CHAIRPERSON GRIFFIS: That's correct.  
20 Excellent.

21 If there's nothing further then --  
22 anything else?

23 MS. BAILEY: Just the color renderings,  
24 sir. I don't believe those are in the file, the  
25 color-coded --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: This site plan?

2 MS. BAILEY: There was some other color-  
3 coded renderings that were presented today.

4 CHAIRPERSON GRIFFIS: Oh, I'm sorry, yes.  
5 Obviously, if it was presented today, we will have it  
6 in the record if it isn't already put in.

7 Good, very well. Then we will see you on  
8 the 6th perhaps.

9 MR. STILLWELL: Yes.

10 CHAIRPERSON GRIFFIS: We will set a  
11 decision. Of course, the record is closed at this  
12 time. We will call this for decision and  
13 deliberation; there would be no other additional  
14 testimony provided to the Board in this case.

15 Thank you all very much.

16 Let's move ahead then and we will call the  
17 next case, the final case for the morning.

18 MS. BAILEY: Application No. 17466 of 2109  
19 10th Street Associates LLC, pursuant to 11 DCMR  
20 3103.2, for a variance to allow a reduction in the  
21 required amount of residential recreation space under  
22 Section 773, serving an existing apartment house in  
23 the ARTS/C-2-B District at premises 2109 10th Street,  
24 Northwest, Square 358, Lot 9.

25 CHAIRPERSON GRIFFIS: Unfortunately, a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 very good afternoon to you both. If you would like to  
2 state your name and address for the record, I think we  
3 could get right into this application.

4 MR. SHER: Mr. Chairman, for the record,  
5 my name is Steven E. Sher, the Director of Zoning and  
6 Land Use Services with the Law Firm of Holland &  
7 Knight. Seated to my right is Paul Robertson. We are  
8 here on behalf of 2109 10th Street Associates LLC, the  
9 owner of the property.

10 This is a preliminary matter with respect  
11 to the posting of the notice on the property. Through  
12 inadvertence and miscommunication within our office,  
13 the notice did not get posted until six days in  
14 advance of the hearing rather than the fifteen days  
15 normally required. We would request the Board to  
16 waive the rules and allow the hearing to go forward  
17 this afternoon, as opposed to this morning.

18 CHAIRPERSON GRIFFIS: We appreciate your  
19 bringing that to our attention. The Board was well  
20 aware of that, and that's actually why we grouped them  
21 all together, the non-posting crowd.

22 (Laughter.)

23 I note that ANC, Mr. Spalding is here. I  
24 would like to hear if you have any objections with us  
25 continuing, as this wasn't posted for the proper time.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com



1 MR. SPALDING: Phil Spalding. I live at  
2 1929 13th Street, and I represent ANC-1B, and we have  
3 no opposition to going forward.

4 CHAIRPERSON GRIFFIS: Excellent. Thank  
5 you.

6 Board members?

7 MEMBER ETHERLY: Mr. Spalding, would you  
8 suggest that we do, however, be somewhat hard on Mr.  
9 Sher for missing a posting or should we go easy?

10 MR. SPALDING: I think there have been  
11 enough scoldings this morning.

12 MEMBER ETHERLY: Thank you, sir.

13 MR. SPALDING: I think Mr. Sher was here  
14 to listen to them.

15 MEMBER ETHERLY: Excellent. Thank you,  
16 sir. Thank you, Mr. Chair.

17 CHAIRPERSON GRIFFIS: We appreciate that.

18 I have no difficulty continuing on this.  
19 In fact, just the fact that the ANC is here and,  
20 obviously, it has gone through the public notice,  
21 let's move ahead unless there is any objection from  
22 the Board.

23 Mr. Sher, it's all to you.

24 MR. SHER: Mr. Chairman, members of the  
25 Board, we can be as brief as you like us to be. We

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 are prepared to stand on the written record, if the  
2 Board has pleasure in that. Otherwise, I can give you  
3 a very brief summary of what this case is about.

4 CHAIRPERSON GRIFFIS: I think we need a  
5 brief summary on this one.

6 MR. SHER: Okay. This is an existing  
7 building located on the east side of 10th Street  
8 between V and W Streets, Northwest. It's in a C-2-  
9 B/ARTS overlay district. The key, obviously, there is  
10 C-2-B.

11 It is a small building. It has only seven  
12 units. The lot's only 25-feet wide. It's a  
13 relatively new building. It was built with the  
14 understanding as far as the permanent plans were  
15 concerned that we would provide the appropriate amount  
16 of residential recreation space, and we did.

17 The building is built. The residential  
18 recreation space is there. Frankly, it's not very  
19 good space. We designed it; it complies, but it's not  
20 very good space.

21 As a result of that, as a result of the  
22 building having been built and the space configured  
23 the way it is, and the determination by Mr. Robertson  
24 on behalf of the owner and others that it would be  
25 better if we could use that space for parking as

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1       opposed to residential recreation space, what we are  
2       here before the Board to seek is to reduce the amount  
3       of residential recreation space to 688 square feet and  
4       to provide six total parking spaces on the site for  
5       the seven units in the building.

6               Parking is required under the regulations  
7       only at the rate of one space for every three units.  
8       So for seven units we are only actually required to  
9       provide two spaces, but the demand in the neighborhood  
10      for parking would seem to suggest that, if we could  
11      provide more, that would be better.

12             So what we would like to do is provide, as  
13      I said, six total parking spaces, as shown on the  
14      plans which we submitted to the Board with our  
15      application. The application was filed on December  
16      5th. The plans are actually dated November 29th.

17             There would be four full-sized spaces and  
18      two compact spaces. Only two full-sized spaces are  
19      required. So it's more parking than the regulations  
20      require.

21             Because of the width of the lot and the  
22      size of the property, there is essentially no other  
23      way to provide residential recreation space elsewhere  
24      on the lot. If you think about putting it up on the  
25      roof, you need to have two means of egress and other

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 requirements for being able to access the roof. On a  
2 25-foot wide lot, it just can't happen.

3 So either we keep the residential  
4 recreation space on the ground as it is now in the  
5 admittedly not very good condition or we can replace  
6 with a total of six parking spaces on the ground  
7 floor, partly under the building and partly in the  
8 open space adjacent to public alleys at the rear.

9 We think that the size and shape of the  
10 lot, the configuration, the size of the building  
11 create the exceptional situation. The practical  
12 difficulty is, again, that there is no other way to  
13 provide the residential recreation space other than  
14 where it is now, and we think that space is better  
15 used for parking, and that parking would be a more  
16 compatible and a more beneficial use of that area than  
17 leaving it in the way it is now.

18 That's the two-minute summary.

19 CHAIRPERSON GRIFFIS: Indeed, and I think  
20 that is an excellent summary. My understanding, then,  
21 is the uniqueness really is circumstantial and  
22 physical. I mean you have a lot that is about 3,125  
23 square feet, which is particularly small in my  
24 familiarity with C-2-B. What you are saying is that  
25 there is a circumstance around that, that uniqueness,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 that tightness of everything trying to get fit into  
2 it, the circumstances that once it's up and complete,  
3 that the reality of the utilization, the reality of  
4 the compliance with the regulations actually lends  
5 itself to some of the practical difficulty of the  
6 reality of the need and the demand.

7 Now parking, of course, is part of our  
8 regulations. Parking is not independent of it.  
9 You've met the requirement. However, what you are  
10 saying is that the better utilization of it puts you  
11 into a competitive aspect that makes it practically  
12 difficult to completely comply with the regulations.

13 I was noting in the 25-foot dimension that  
14 we could say, then, just modify the building to put it  
15 up on the roof. What I am hearing you say, it is my  
16 understanding that, first of all, two means of egress  
17 off the roof have not been provided, and if you did  
18 put a structure and a cover on the stairs, would you  
19 potentially lose that dimension of the 25-foot which  
20 would be required for the roof?

21 Is that also correct?

22 MR. SHER: Yes, that's part of it. Being  
23 able to get up there is the biggest problem, pure  
24 access.

25 CHAIRPERSON GRIFFIS: Sure.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           MR. SHER: Then if you had to put a roof  
2 structure up there and you had to set the roof  
3 structure back, you've got an alley on one side, so we  
4 would have to set it back from the south. I guess we  
5 could technically put it up against the north side  
6 property wall. At the moment that is an open side of  
7 the building. There is no adjoining building there.  
8 But it just didn't seem to be a way that we could do  
9 that that would comply without creating other areas of  
10 relief that we might have to come back for.

11           CHAIRPERSON GRIFFIS: Right, right. It  
12 seems like, kind of in sum, when I was thinking about  
13 this this morning, and then in reading the entire  
14 record, it's almost the de minimis size and the heavy  
15 requirement in the C-2-B for the residential rec  
16 percentage creates a practical difficulty. Even if we  
17 kind of remove this from it's already provided, just  
18 in the particular smallness of trying to make this  
19 actually usable obviously shows that it could not --  
20 it wasn't done.

21           MR. SHER: There is probably a dimension  
22 of a lot somewhere where 15 percent of the amount of  
23 residential floor space in C-2-B zone is the right  
24 amount. Unfortunately, most of the cases I've seen  
25 have either been too big for that dimension or too

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 small for that number. So you wind up with way more  
2 space than you need or an ability not to provide the  
3 space because the site is too small.

4 Somewhere out there I'll find a case that  
5 I won't have to bring here because it will meet the  
6 residential requirements. It will be the right amount  
7 of space, and you and I will be doing something  
8 different on a Tuesday. But so far that hasn't  
9 happened.

10 CHAIRPERSON GRIFFIS: Parking a car or  
11 recreating.

12 (Laughter.)

13 Okay, questions? Yes, Mr. Mann?

14 MEMBER MANN: With all your experience in  
15 these sort of situations, I'm surprised that we're  
16 hearing this today. Was this unanticipated?

17 MR. SHER: What was unanticipated in part  
18 was the demand for parking that the residents in the  
19 building had and also unanticipated how unfriendly the  
20 space turns out to be when you're out there on the  
21 ground.

22 I think OP's pictures that are attached,  
23 the pictures attached to the OP report are a little  
24 clearer than the pictures we had attached to our  
25 application, which are a little fuzzy when they got

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 reproduced. But it shows a pretty barren space  
2 adjacent to two public alleys, one on the south and  
3 one on the east. It's just not very good space, and  
4 I don't think we anticipated that it would be as  
5 unfriendly as it turns out to be.

6 MR. PARSONS: I would just like to follow  
7 up.

8 CHAIRPERSON GRIFFIS: Yes, go ahead.

9 MR. PARSONS: What was anticipated the  
10 under part of the building to be used for? Was it to  
11 be enclosed or an exercise room or what were people to  
12 do there?

13 MR. SHER: There is a space inside the  
14 building that is an enclosed conditioned space with  
15 access down from inside the building. The other space  
16 was just there because it met the literal number of  
17 square feet we had to provide.

18 MR. PARSONS: And people would park there?  
19 I mean there's no other alternative? They're not  
20 going to sit out there and read a book or exercise.

21 MR. SHER: I suppose you could use your  
22 Blackberry there where I can't use it in here, but  
23 it's not very good space. That's all I'll say.

24 MR. PARSONS: Thank you.

25 CHAIRPERSON GRIFFIS: Yes?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 VICE CHAIRPERSON MILLER: And that space,  
2 are you saying that it is impossible to make that  
3 space good space for recreation? I mean we have a  
4 lousy picture. It looks terrible. Who wants to use  
5 it? But are you saying it cannot be transformed into  
6 good recreation space?

7 MR. ROBERTSON: My name is Paul Robertson.  
8 I'm the owner of the property.

9 I suppose, given a sufficient amount of  
10 time and investment, that something could be  
11 transformed, but in the real world of what would  
12 normally seem feasible, no.

13 It is also viewed from -- there's a very  
14 large building behind, so there is really no privacy  
15 back there. Either there's a million people looking  
16 into it -- you can't see it from the pictures, but  
17 it's the Rhapsody building.

18 Also, what was unanticipated was the  
19 degree of demand for parking when we were getting  
20 close to the sales, you know, time when we were going  
21 to sell the units and during when we were selling the  
22 units, for people to have parking.

23 And also comments from the neighbors when  
24 they found out that there was only going to be the  
25 limited parking and why weren't we pushing to get more

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 parking. So it's not just our interest, but it's  
2 everyone because there are other condominium projects  
3 going up in the neighborhood. It's a block off of U  
4 Street.

5 So it was sort of a combination of  
6 factors.

7 VICE CHAIRPERSON MILLER: Okay. I guess  
8 my question was fitting this into the variance test.  
9 There are two issues. I mean one is I think what Mr.  
10 Parsons and Mr. Mann probably have said like, why  
11 didn't you think of this before? It's kind of your  
12 architects draw it out. Why can't they tell ahead of  
13 time that this rec faces --

14 CHAIRPERSON GRIFFIS: Was this a matter of  
15 rec project?

16 MR. ROBERTSON: Yes.

17 CHAIRPERSON GRIFFIS: That's why.

18 VICE CHAIRPERSON MILLER: Well, not if  
19 they couldn't meet the recreation, residential  
20 recreation requirement; they would have to come down -  
21 -

22 MR. ROBERTSON: But it was met.

23 VICE CHAIRPERSON MILLER: But it was met.

24 CHAIRPERSON GRIFFIS: But you're asking  
25 them why. I understand the question. I mean, why are

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 we here now when it's already done? Why didn't you  
2 look at this before?

3 I think it's probably my understanding  
4 would be, well, of course not, that it was faster --  
5 so you don't open yourself up to coming to us because,  
6 as much as we think we're fun, I don't think everyone  
7 does.

8 (Laughter.)

9 So you move ahead. Now what I'm hearing  
10 is that now we have a project that has come to  
11 fruition, and it met all the requirements of our  
12 regulation but the reality of what that means isn't  
13 successful.

14 VICE CHAIRPERSON MILLER: Okay, I could  
15 see that.

16 CHAIRPERSON GRIFFIS: That's how I'm  
17 reading it.

18 VICE CHAIRPERSON MILLER: Okay. So then  
19 the next question is, though we hear often parking is  
20 better than this kind of recreation space, it's  
21 preferable, it's more compatible, it's not such a  
22 great regulation; it's being revisited. Okay, that's  
23 not unique.

24 So I guess I would like if you could  
25 address -- maybe some of the uniqueness here is the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 reality of how it's playing out in your case, but not  
2 just that parking is preferable to the people who want  
3 to buy the units, unless that comes into an economic  
4 argument or something related to your practical  
5 difficulty on it.

6 MR. SHER: No, I don't think we  
7 necessarily need to get to any economic argument here.  
8 What is exceptional is the size of the site and what  
9 you would be forced to do in order to provide  
10 recreation space in some other way.

11 So you're back to the situation you've  
12 heard many times. You wind up taking programmed space  
13 out of the building, because if you have to put more  
14 space inside, it takes away from the number of units  
15 that you're providing within the 3.5 FAR that C-2-B  
16 allows, and/or if you look for other alternatives, the  
17 building comes to the property at the front; you can't  
18 get up to the roof because of the means of egress, and  
19 the trickle-down effect that that has going through  
20 the building to try to do that just to provide  
21 recreation space for seven units.

22 We also have space that can't count as  
23 residential recreation space because it's not communal  
24 space, but there are private recreation spaces for  
25 four of the seven units in the building.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1           So all of those factors together we  
2 believe constitute a situation where the Board could  
3 grant a variance, find that there is an exceptional  
4 situation or find that the integrity and purpose of  
5 the regulation is not being detracted from.

6           MEMBER ETHERLY: If I could just jump in,  
7 Mr. Chair, I kind of find myself chuckling a little  
8 bit. Your choice of words, Mr. Sher, I think was  
9 spot-on where you indicated that the Board could do  
10 it. I think I'm kind of with Mrs. Miller a little  
11 bit. I guess I'm struggling with the fact -- and I  
12 get the argument. I get it, but I'm struggling with  
13 the fact that, well, you built the darned thing and  
14 it's there, and you got the space, and you did it as  
15 a matter of why you're totally in compliance. Now  
16 you're kind of asking us to undo the space.

17           Again, the pictures said a thousand words.  
18 It's crappy space, using the unscientific term of it.  
19 But it's there.

20           So I'm trying to struggle with kind of  
21 undoing the fact that it's there and you're completely  
22 in compliance. I agree with where Mrs. Miller was  
23 going in that the parking piece I completely get. I  
24 think we're all intimately familiar with that, that  
25 lament that we hear now almost as a daily refrain here

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 in the District of Columbia. But I'm just still kind  
2 of struggling to get my hand around it.

3 CHAIRPERSON GRIFFIS: I appreciate that,  
4 and I think everyone is. It reminds me of an  
5 analogous case that we heard on residential recreation  
6 space where it was brought forth and the diagram  
7 showed, and it was a perfect space that complied with  
8 outdoor residential recreation space, and, ironically,  
9 it was 9x19. It was in between six other spots, and  
10 that was the residential rec space. We looked at it  
11 and we said, "My gosh, who's going to bring a chair  
12 out there? Why are we going to sit there?" And they  
13 said, "Well, we need relief from it because that's  
14 what we're providing or it could be a parking space."

15 I understand that there is great concern  
16 because of the threshold tasked to the variance, but  
17 residential rec is interesting that it is a variance.  
18 I think there is particular -- well, I'll leave it at  
19 that for now.

20 Other questions, clarifications?

21 (No response.)

22 Why don't we proceed with the rest of this  
23 and we'll see where we are in a few moments? I think  
24 it is important to get to the Office of Planning's  
25 report, and they are here to present it.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MR. JESSICK: Thank you, Mr. Chairman,  
2 members of the Board. My name is Matt Jessick. I'm  
3 with the Office of Planning.

4 The Applicant for Case No. 17466 has  
5 requested variance relief from Section 773,  
6 Residential Recreation Space. The Office of Planning  
7 has no outstanding issues and recommends approval of  
8 the application.

9 As was mentioned, the property at 2109  
10 10th Street is an existing condominium building which  
11 was built as a matter of right and currently meets all  
12 zoning requirements, including residential recreation  
13 space.

14 The Applicant has heard requests from the  
15 community to provide more off-street parking and also  
16 feels that the building would be marketable if a  
17 higher parking ratio were provided.

18 The Applicant has met the three-part test  
19 for a variance. The property is unique in that it is  
20 25-feet wide. This uniqueness leads directly to the  
21 second part of the test, which is that it would be  
22 practically difficult to provide recreation space on  
23 the roof because of the minimum area and dimensional  
24 requirements and the need for two means of egress.

25 The result is that a large portion of the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 recreation space is provided currently at the rear of  
2 the property near the intersection of two public  
3 alleys. The recreation space is currently  
4 unattractive and perhaps, some would say, unusable.

5 The third part of the test is, can the  
6 relief be granted without detriment to the public good  
7 or without impairing the intent of the zoning  
8 regulations? As I mentioned, the surrounding  
9 neighbors, in fact, asked for additional off-street  
10 parking and, therefore, the relief would not cause a  
11 detriment to the public good.

12 The zoning regulations aim to provide  
13 enough recreation space and parking spaces for each  
14 development, and this Applicant would provide  
15 additional parking above the requirement and would  
16 still provide some recreation space for the residents.

17 The ANC voted nine, zero, two to support  
18 the application, and in their decision they cited the  
19 provision of additional off-street parking as a reason  
20 to support the project.

21 The Office of Planning has received no  
22 letters or phone calls of support or opposition to the  
23 project. Again, we have no outstanding issues and  
24 recommend approval.

25 I would be happy to take any questions.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com



1 CHAIRPERSON GRIFFIS: Excellent. Thank  
2 you very much.

3 Questions from the Board?

4 MEMBER ETHERLY: Not for the Office of  
5 Planning. I just want to come back real quickly to  
6 Mr. Sher just to make sure I understand something.

7 The current recreation space that you are  
8 providing, are you counting -- let me look to page 8  
9 of 8 of the Office of Planning's report. It's the  
10 picture on the very back page. The recreation space,  
11 just to be sure that I'm clear, the space that  
12 currently has the very lovely -- is that a convertible  
13 Saab, by the way -- a very lovely convertible Saab  
14 there, is that counted as recreation space for  
15 purposes of zoning?

16 MR. SHER: The Saab, no.

17 MEMBER ETHERLY: The Saab itself is  
18 recreational.

19 (Laughter.)

20 MR. SHER: Well, that's true. I hadn't  
21 thought about that. That's a good argument. No,  
22 never mind.

23 (Laughter.)

24 No, that is not.

25 MEMBER ETHERLY: Okay, just the outside

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 portion?

2 MR. SHER: The outside portion there, some  
3 of the space inside the building, and other spaces --

4 MEMBER ETHERLY: Other areas?

5 MR. SHER: Not the two parking spaces that  
6 are there.

7 MEMBER ETHERLY: Okay, got you. Thank  
8 you. Thank you, Mr. Chair.

9 CHAIRPERSON GRIFFIS: So it's the rear  
10 yard which is 25x25, which is your 1375, and then the  
11 addition up to 1408 is inside the building?

12 MR. SHER: I'm not sure your numbers match  
13 my numbers, but the required amount of recreation  
14 space is 1339 or 1399 -- 1399. We want to provide  
15 688. So we would have about 7 percent instead of  
16 about 15 percent.

17 CHAIRPERSON GRIFFIS: Okay. But following  
18 up on Mr. Etherly, just two parking spaces are  
19 provided, correct?

20 MR. SHER: Right.

21 CHAIRPERSON GRIFFIS: But we're showing  
22 three under the building?

23 MR. SHER: Right, there would be three  
24 under the building and three in the back.

25 CHAIRPERSON GRIFFIS: And the reason why

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1       there aren't three under the building now is because  
2       some of that space goes to residential recreation?

3               MR. SHER:   Yes.

4               CHAIRPERSON GRIFFIS:   Okay.   So maybe Mr.  
5       Etherly was clear on that; I wasn't.   Okay.

6               And that's the portion where you wrote in  
7       the submission that part of it is not open directly to  
8       the sky?

9               MR. SHER:   Right.

10              CHAIRPERSON GRIFFIS:   Okay.   All right,  
11       there it is.

12              Anything else?   Clarifications?   Ms.  
13       Miller?   Of the Office of Planning or the Applicant?

14              VICE CHAIRPERSON MILLER:   Applicant.   Have  
15       you provided all the private rec space that you can?

16              MR. SHER:   Yes.   On the plans there are  
17       four terraces shown for four of the units.   Two of  
18       them are in the middle, south-facing on the third  
19       floor, and two on the front west-facing.

20              CHAIRPERSON GRIFFIS:   Anything else from  
21       the Board for the Office of Planning?   Does the  
22       Applicant have any cross examination of the Office of  
23       Planning?

24              MR. PARSONS:   No, sir.

25              CHAIRPERSON GRIFFIS:   Okay, let me answer

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 one question here.

2 Mr. Mann?

3 MEMBER MANN: Mr. Sher, I have a question  
4 for you.

5 CHAIRPERSON GRIFFIS: Yes.

6 MEMBER MANN: If this --

7 CHAIRPERSON GRIFFIS: For me?

8 MEMBER MANN: No, for Mr. Sher.

9 CHAIRPERSON GRIFFIS: That was "Mr.  
10 Chair," not "Mr. Sher."

11 (Laughter.)

12 MEMBER MANN: That's correct.

13 CHAIRPERSON GRIFFIS: It's lunchtime, I'm  
14 sorry. Thank you, Mr. Mann.

15 MEMBER MANN: If this application were  
16 before us before the building were built, if we were  
17 just looking at plans in your request in this  
18 variance, would your arguments be any different or  
19 would what you are asking us to consider as the  
20 variance test be any different?

21 MR. SHER: Essentially, no. What we have  
22 discovered from experience is that after construction  
23 the space is just not very good. But I think if we  
24 had come in and tried to figure out what space we  
25 could have provided that would be good, it's just not

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1       there. So the answer is no. The size of the lot, the  
2       shape of the lot, the inability to use the roof, all  
3       those things would be the same whether the building  
4       was built or before the building was built.

5                   CHAIRPERSON GRIFFIS: Anything else? Any  
6       other questions?

7                   (No response.)

8                   Very well, let's move ahead then.

9                   Yes, Mr. Spalding.

10                  MR. SPALDING: Phil Spalding. I live at  
11       1929 13th Street, and I represent ANC-1B.

12                  We have submitted a letter into the record  
13       that shows our unanimous support of this application.  
14       To that I would like to add a couple of small pieces  
15       of context for the Board.

16                  Square 358 is approximately 25 percent R-  
17       5-B and the remaining three-quarters is ARTS/C-2-B.  
18       One of the difficulties with ARTS/C-2-B with  
19       residential development is that we cannot provide RPP  
20       on-street parking. In this case, Square 358 is being  
21       predominantly developed as residential. A few years  
22       ago I would have described this square as maybe 30 to  
23       50 percent commercial with about 40 housing units.  
24       Within the next few years it's going to be just two  
25       commercial outlets and approaching 300 residential

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 units.

2 The demand here is specifically weighted  
3 toward parking rather than residential recreation.  
4 Our community does provide more than enough recreation  
5 of different varieties, maybe not in the residential  
6 context, but we do provide lots of residents  
7 recreational opportunities.

8 In this specific case, when it came before  
9 the Commission, we weighed the balance of those two  
10 things. Here, where there is not going to be  
11 regulated on-street parking, that was a specific  
12 difficulty for residents who would be buying into this  
13 block. So trading off a bit of the residential  
14 recreation space to accommodate off-street parking for  
15 these cars was a trade that we were willing to make.

16 Other than that, I will rest on what we  
17 have submitted.

18 CHAIRPERSON GRIFFIS: Excellent. Thank  
19 you very much.

20 Questions from the Board?

21 (No response.)

22 Does the Applicant have any cross?

23 MR. SHER: No.

24 CHAIRPERSON GRIFFIS: Thank you.

25 Actually, that's of particular interest. I think that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 is a good summation of the surrounding area. That  
2 puts it into great context in terms of the R-5-B that  
3 surrounds the area and the C-2 and the impact of that.  
4 When you say that, in fact, the blocks could not get  
5 their residential permit parking because of the  
6 district of which the zoning has labeled it, that's a  
7 fascinating aspect that I think also changes the  
8 parameters of how we would look at a successful  
9 implementation of the regulations.

10 Very well. That being said, let's move  
11 ahead to any other persons present in this Application  
12 17466, either in support or in opposition; can come  
13 forward at this time.

14 (No response.)

15 Not noting a stampede of people that come  
16 forward, we can move ahead for any closing remarks  
17 that you might have.

18 MR. SHER: Mr. Chairman, we believe that  
19 the Applicant has met its burden of proof under the  
20 regulations, that the Board should find that there is  
21 exceptional situation causing a practical difficulty  
22 for the owner, and that the relief can be granted  
23 without substantial detriment to the regulations.

24 We would request the Board to grant the  
25 application. We, hopefully, request that you grant it

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 today and issue a summary order, and we can all go  
2 have lunch. Thank you very much.

3 CHAIRPERSON GRIFFIS: I'm not hungry.

4 (Laughter.)

5 Okay, but in all seriousness, of course,  
6 which is the way we actually operate around here, I  
7 think it is appropriate to take -- the record is full  
8 on this. We are not going to have anything more put  
9 into the record that is going to facilitate it. I  
10 think there is a strong deliberation.

11 So I would move approval of Application  
12 17466, and that is for the variance to reduce the  
13 amount of residential recreation space at 2909 10th  
14 Street, Northwest, and I would ask for a second.

15 MEMBER MANN: Second.

16 CHAIRPERSON GRIFFIS: Thank you very much,  
17 Mr. Mann. I do appreciate it.

18 I don't think it's inappropriate to say on  
19 the record and in public that we often have weak  
20 variance test cases made. This one isn't for lack of  
21 ability or lack of substance. It is a difficult  
22 parameter in the realities of what we're looking at.

23 One, with the section itself for  
24 residential recreation space, of which the Board is  
25 all too familiar, and its precariousness, and perhaps

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com



1 its own out-of-date aspect of need.

2 The balancing on this particular case of  
3 what is better served in the surrounding community  
4 and, therefore, the longevity of the block, and,  
5 therefore, frankly, the integrity of the zone map and  
6 plan, but that gets ahead of ourselves in terms of  
7 what was actually presented today. That's the  
8 uniqueness.

9 I think Mr. Mann had an excellent question  
10 of, would this be the same test if it was at permit  
11 stage as opposed to now? I think that's a sense of  
12 the way I was looking at it; as if this building  
13 didn't exist, would we not be looking at a strong  
14 application? I think we would. I think based on the  
15 fact of the de minimis size for the zone district that  
16 it's in, the 25-foot, which allows for incredible  
17 height and incredible density, and, obviously, does it  
18 in terms of the depth of this, the practical  
19 difficulty in providing it.

20 I think we have seen in this case that you  
21 can shoehorn it in, but does that really fit the  
22 intent or really the purpose of the requirement? I  
23 think it's obviously been shown to be practically  
24 difficult in providing that space as it is intended  
25 and as is written in the regulations.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1           In addition, last, I would say the test,  
2           the intent of the zone planning map for the public  
3           good, actually, what we're being presented here is  
4           that it would be better served, the people in the  
5           surrounding area and the regulates would be better  
6           served if the relief was to be granted. So I would be  
7           supportive of the motion.

8           I would open it up to any other comments.

9           VICE CHAIRPERSON MILLER: Mr. Chairman, I  
10          thought you were going to say that sometimes we come  
11          in here and we read the papers and we think this is a  
12          lousy case, or whatever, which is basically where I  
13          was coming from. It seemed like, oh, they want  
14          parking now.

15          But, actually, I think the Applicant and  
16          ANC and the Office of Planning did a good job -- and  
17          the Chairman -- with respect for me to see it in a  
18          different light, and Mr. Mann, because, basically,  
19          fitting into the variance test, I do think it fits  
20          into the uniqueness exceptional condition prong in  
21          that it is a very small building, only 25-feet wide,  
22          and we often see that that does create a problem.

23          In this case, just because there was rec  
24          space that's designated for recreational space, if  
25          it's lousy space, if it's unusual, then it really

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 doesn't fulfill the purpose of the regulation. So  
2 it's almost the same as not being able to -- it is the  
3 same as not being able to meet that requirement, as  
4 far as I can tell, because if no one is going to use  
5 it, it doesn't meet the requirement, if it is so bad.

6 So I think that it does meet the  
7 exceptional conditions and the practical difficulties,  
8 and there's no adverse impact on the public good. In  
9 fact, it's a positive impact to provide a place for  
10 parking and to provide a meaningful use of the  
11 property.

12 CHAIRPERSON GRIFFIS: Excellent. Thank  
13 you.

14 Others?

15 MEMBER MANN: Yes. I also thought that it  
16 was easier to consider if it was almost considered as  
17 though it were a new application for an unbuilt  
18 building.

19 I think the biggest struggle, though, I  
20 had to get over was just that you had to kind of ask  
21 us to unring that bell in a way that we haven't really  
22 had to consider before.

23 CHAIRPERSON GRIFFIS: Well said.

24 Others?

25 (No response.)

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1                   If there's no other comments, then we do  
2                   have a motion before us and it has been seconded. All  
3                   those in favor signify by saying.

4                   (Chorus of ayes.)

5                   And opposed?

6                   (No response.)

7                   Abstaining?

8                   (No response.)

9                   Very well, why don't we record the vote?

10                  MS. BAILEY: Mr. Chairman, the vote is  
11                  recorded as five, zero, zero to approve the  
12                  application. Mr. Griffis made the motion; Mr. Mann  
13                  seconded. Mrs. Miller, Mr. Etherly, and Mr. Parsons  
14                  are in support.

15                  Summary order, sir?

16                  CHAIRPERSON GRIFFIS: Thank you very much.

17                  Yes, I think we could waive our rules and  
18                  regulations and issue a summary order on this, unless  
19                  there's any opposition from the Board or the  
20                  Applicant.

21                  (No response.)

22                  Not noting any opposition --

23                  MR. SHER: The Applicant has no  
24                  opposition, for the record.

25                  CHAIRPERSON GRIFFIS: Indeed. Very well.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1                   Is there anything else for the Board this  
2 morning?

3                   MS. BAILEY:   Not for the morning, Mr.  
4 Chairman.

5                   CHAIRPERSON GRIFFIS: Thank you all. Have  
6 a very pleasant day.

7                   Let's adjourn our morning session.

8                   (Whereupon, the foregoing matter went off  
9 the record at 12:41 p.m. for lunch and went back on  
10 the record at 2:02 p.m.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 2:02 p.m.

3 CHAIRPERSON GRIFFIS: Good afternoon,  
4 ladies and gentlemen. Let me call to order our  
5 afternoon session, the 9th of May, 2006.

6 This is, of course, the Board of Zoning  
7 Adjustment for the District of Columbia, and my name  
8 is Geoff Griffis, Chairperson.

9 Joining me today is the Vice Chair, Ms.  
10 Miller, and our esteemed member, Mr. Etherly, will be  
11 with us shortly. He was just detained for half a  
12 moment.

13 Representing the Zoning Commission with us  
14 is Mr. Parsons this afternoon, and representing the  
15 National Capital Planning Commission is Mr. Mann.

16 Copies of today's hearing agenda are  
17 available for you. They are located, hopefully, where  
18 you came into the room. I can't see it behind our  
19 column. As we have reconfigured the entire room, I  
20 have lost sight of that door. However, that's where  
21 they normally are.

22 With that, though, I will not be adjusting  
23 our schedule, so we will get right into it.

24 There are several important aspects that  
25 I will go through in my opening remarks, and I will

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 speak very quickly in order to make up a few moments.  
2 I appreciate everyone's patience with us, as our  
3 morning went a little bit over.

4 First of all, it should be well-known that  
5 we are creating an official transcript. Therefore,  
6 all of our proceedings are going to be recorded.

7 It is very important that you fill out two  
8 witness cards prior to coming forward to speak to the  
9 Board and give them to the court reporter, who is  
10 sitting on my right on the floor. She will be  
11 creating our official transcript.

12 Attendant to that, also, when you come  
13 forward, make yourself comfortable at the table in  
14 front of us, where you will provide testimony. You  
15 just need to state your name and address for the  
16 record. You only need to do that once. Obviously,  
17 that will get you correctly onto the transcript.

18 We are also being broadcast live on the  
19 Office of Zoning's website. Attendant to that, I may  
20 give some instruction as to how your boards will show,  
21 so that we can actually transmit that on the cameras.

22 We would also ask that, of course, you  
23 refrain from making any noises in the overall hearing  
24 room, so we don't disrupt either of those  
25 transmissions.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1                   Importantly, it was made note this morning  
2                   that not only will I ask you to turn off your cell  
3                   phones and other beepers and such, but would also ask  
4                   that you turn off your Blackberries because it does  
5                   disrupt the transmission.

6                   That being said, the order of procedure  
7                   for our special exceptions and variances is as  
8                   follows:

9                   First, we hear from the applicant the case  
10                  presentation. Secondly, we will hear any government  
11                  reports attendant to that application from the Office  
12                  of Planning, the Department of Transportation. Third,  
13                  we will go to the ANC within which the property is  
14                  located. Fourth, we hear from the persons or parties  
15                  in support of an application. Fifth are persons or  
16                  parties in opposition to an application.

17                  After all of that is done, we will hear  
18                  from the applicant again. They will provide us with  
19                  any rebuttal testimony that they might have or closing  
20                  remarks or summations.

21                  Cross examination of witnesses is  
22                  permitted by the parties and the applicant in a case.  
23                  The ANC within which the property is located is  
24                  automatically a party in the case. They are,  
25                  therefore, afforded the ability to cross examine

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com



1 witnesses.

2 We will establish parties in each of the  
3 cases as a preliminary matter. Obviously, therefore,  
4 any party that is established will be able to conduct  
5 cross examination.

6 We have full ability and authority to  
7 instruct time and material and direction of cross  
8 examination, but I will take that up, if needed, and  
9 on specific matters.

10 Our record will be closed at the  
11 conclusion of the hearing. It is very important to  
12 understand that, that we are going to be creating an  
13 official record before us today, and once the hearing  
14 is done, the book is essentially closed. Anything  
15 that we will make our decisions on must be based  
16 solely what is put into the record.

17 So, unless we specifically request  
18 additional information, you should make note that you  
19 should put all of your information into the record,  
20 either in writing or in testimony, oral testimony,  
21 today.

22 We do ask that people present please not  
23 engage Board members in private conversations this  
24 afternoon if we recess or take a moment because we  
25 are, of course, going to deliberate solely on the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 record that's presented before us today and in the  
2 public, and if we are having private conversations, it  
3 may lend some to give the impression that we are  
4 receiving information outside of the public record.

5 To that, the Sunshine Act, of course,  
6 requires us to conduct all our hearings in the open  
7 and before the public. We do on occasion enter into  
8 Executive Session, both during or after hearings on  
9 cases. We use that not only to tell jokes, but also  
10 to review the record and sometimes to deliberate on  
11 the cases that we have heard.

12 With that, I believe I can say a very good  
13 afternoon to Ms. Bailey, on my far left, with the  
14 Office of Zoning; Mr. Moy, also with the Office of  
15 Zoning; Mr. Nyarku is in and out, also with the Office  
16 of Zoning.

17 I'm going to ask that all persons present  
18 today that are going to provide testimony to the  
19 Board, or are thinking of providing testimony, if you  
20 would please stand and give your attention to Ms.  
21 Bailey, she's going to swear you in.

22 MS. BAILEY: Would you please raise your  
23 right hand?

24 (Witnesses sworn.)

25 CHAIRPERSON GRIFFIS: Excellent. Thank

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1       you all very much.

2               At this time, then, we would be ready for  
3 preliminary matters. Preliminary matters are those  
4 which relate to whether a case will or should be heard  
5 today. Requests for postponements, continuance, or  
6 withdrawals, whether proper and adequate notice of an  
7 application has been provided, these are all elements  
8 of preliminary matters, meaning matters that should  
9 come to the Board's attention prior to calling a case.

10              I ask Ms. Bailey if she is aware of any  
11 preliminary matters for the Board's attention.

12              MS. BAILEY: Mr. Chairman, members of the  
13 Board, and to everyone, good afternoon.

14              Staff does not have any at this point, Mr.  
15 Chairman.

16              CHAIRPERSON GRIFFIS: Very well. Does  
17 anyone else here present have a preliminary matter for  
18 the Board's attention? They can come forward at this  
19 time.

20              (No response.)

21              Not noting anybody coming forward, why  
22 don't we call the first case of the afternoon?

23              MS. BAILEY: And that is the application  
24 of ARCH Training Center, No. 17463, pursuant to 11  
25 DCMR 3103.2, for a variance from the off-street

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 parking requirements under Subsection 2101.1, to  
2 convert a vacant community residence facility and re-  
3 occupy it as a 29-unit apartment house. The property  
4 is zoned R-5-A and it is located at 2024 Fendall  
5 Street, Southeast, Square 5777, Lot 952.

6 Mr. Chairman, I just wanted to bring to  
7 the Board's attention that the property was posted.  
8 However, staff is of the opinion that it was not  
9 properly posted.

10 Thank you, sir.

11 CHAIRPERSON GRIFFIS: Excellent. Thank  
12 you very much for that.

13 Not properly posted meaning it was not on  
14 the property?

15 MS. BAILEY: Yes, sir.

16 CHAIRPERSON GRIFFIS: It was in the  
17 public?

18 MS. BAILEY: Right-of-way.

19 CHAIRPERSON GRIFFIS: On a pole?

20 MS. GIORDANO: I'm going to ask Mr. Gross  
21 to speak directly to that.

22 CHAIRPERSON GRIFFIS: Good thought. Mr.  
23 Gross?

24 MR. GROSS: Ms. Bailey approached me about  
25 this a few minutes ago, Mr. Chairman. I guess I was

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 fuzzy on that rule and did not realize telephone  
2 poles were completely out of bounds for posting. So  
3 I will remember that in the future, and I apologize.

4 CHAIRPERSON GRIFFIS: You're clear on that  
5 now then?

6 MR. GROSS: I am very clear.

7 CHAIRPERSON GRIFFIS: We appreciate Ms.  
8 Bailey's eagle eye in picking that up in the posting.

9 (Laughter.)

10 In all seriousness, you know, it is a very  
11 important aspect. Of course, the posting is one of  
12 the ways that we announce that this is going to happen  
13 and get, obviously, the public's participation in  
14 this. If it isn't on the building, one might think  
15 it's no parking or who knows what it was or where it  
16 went to. An important point to bring up. I think  
17 we've all learned a little something today.

18 But, with that, let's move ahead, and I  
19 will turn it over to Ms. Giordano.

20 MS. GIORDANO: Yes, good afternoon, Mr.  
21 Chairman, members of the Board. My name is Cynthia  
22 Giordano, for the record, from Arnold and Porter Law  
23 Firm, representing the Applicant in this case.

24 I'm going to introduce our witnesses and  
25 just jump right into their testimony. I think they

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 have a very interesting story to tell, and a  
2 compelling one today, in support of the requested  
3 variance and special exception.

4 We will start with Rachel Schroder, who is  
5 Chairman of the Board of ARCH Training Center, and  
6 Steve Shaff with Community Vision.

7 We left, I think, on Ms. Bailey's desktop  
8 a little article about Mr. Shaff and Community Vision.  
9 I don't know if you received that or not, but --

10 CHAIRPERSON GRIFFIS: We have that.

11 MS. GIORDANO: And they are both non-  
12 profits.

13 Greg Kearley from Inscape Studio, the  
14 project architect, will also provide some brief  
15 testimony, and Mr. Gross, from our firm, of course, is  
16 going to speak directly to the compliance of the  
17 application with the zoning regulations.

18 So we will begin with the developer team  
19 of Rachel and Steve.

20 MS. SCHRODER: Good afternoon. My name is  
21 Rachel Schroder, and I work with ARCH Training Center.

22 ARCH Training Center has been in Anacostia  
23 -- it's a non-profit, economic development and job  
24 training center -- for 20 years in Anacostia.

25 We work with mostly job training. We have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 53 full-time employees at ARCH and we service  
2 thousands of children under the age of 16 as well as  
3 adults between the age of 16 and 24. We also work  
4 with fatherhood and mother programs.

5 We also do economic development. We have  
6 developed over 540 units of housing since our  
7 existence and most of it in Southeast. Actually,  
8 almost probably 98 percent of it has been in Southeast  
9 within the Anacostia or Ward 8 area.

10 MR. SHAFF: Good afternoon. My name is  
11 Steve Shaff. I'm founder and President of Community  
12 Vision Consultants.

13 I'm actually a for-profit development  
14 company, but we have a very strong and as-committed  
15 social mission as well. One of our current projects  
16 right now is in Washington Highlands. We are  
17 developing over 116 affordable housing homeownership  
18 opportunities while at the same time we are organizing  
19 the community and getting rid of some of the social  
20 concerns of that development project. We are very  
21 successful in literally changing the community around.

22 I am also very active in the community.  
23 I serve on several boards, the Police Boys and Girls  
24 Club, Metro Police D.C. Boys and Girls Club. I'm the  
25 Treasurer. I also helped found several community arts

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 organizations which we use to help cure some of the  
2 issues in our communities. I am also very much  
3 involved with political activism to help address some  
4 of the economic and social issues of our communities.

5 I have been doing this for over 20 years.  
6 We have been developing projects on this scale for the  
7 past three or four years. Fendall is something that  
8 we think we can develop, not only to help address the  
9 affordable housing issues, but also take care of some  
10 of the social issues, the same issues we have been  
11 dealing with for the past 20 years I have been working  
12 in this line.

13 MS. SCHRODER: I just wanted to make a  
14 note, so everyone understands, Steve Shaff of  
15 Community Vision, and ARCH Training Center are working  
16 together to develop Fendall Street, and ARCH remains  
17 the owner of the building, and Community Vision will  
18 be the developer, working with ARCH on every aspect.

19 MR. SHAFF: Some of the objectives and  
20 part of the reason why I'm personally very excited  
21 about this project is it is a very good, affordable  
22 housing project. One of the things that we look at  
23 when we get involved in a community project is, what  
24 can that actual development do to impact the immediate  
25 area? As I said, in our project in Washington

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 Highlands, our approach was not only just to do  
2 affordable housing, but to really address and organize  
3 and get involved with the community to address that.

4 The particular corner this building is on  
5 I think serves well in terms of what we can do as a  
6 redeveloped building and how it can impact the  
7 community.

8 The other issue is this is, by covenant,  
9 by City covenant, and it is recorded on the title,  
10 this has to be and fit within affordable housing  
11 parameters. So even if the market took off in that  
12 particular corner, we are still bound and limited as  
13 to the profit we can make. That's part of the  
14 Homestead Program.

15 I think very few conventional developers  
16 would want to come in here because their profit  
17 potential will be capped. Again, for us that is not  
18 an issue because as important to us is not only  
19 providing affordable, truly affordable, and quality  
20 affordable housing, but we also want to address the  
21 social issues there, which personally is where I  
22 personally enjoy this process.

23 As you know, developing real estate in  
24 D.C. is a very tough profession, but when you add the  
25 social component, for me, in particular, it's very

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 exciting.

2 So our goal here is to keep -- well,  
3 obviously, we have no choice but to keep within the  
4 realms of the limitations on the pricing.

5 The other nice benefit of this particular  
6 project is we want to do this in as high of a green  
7 standard as possible. We are assessing how high the  
8 lead standard we can go. Very specific things such as  
9 a green roof is very much going to be part of this  
10 endeavor. We feel the City's goals of trying to keep  
11 the water runoff issues with the Anacostia are part of  
12 what we want to do.

13 The other thing that Community Vision  
14 strives to do is influence other developers. When  
15 they see that we can come into a community, leave  
16 something in the community, do a development better,  
17 it's something that actually serves the developer.

18 So in Washington Highlands, for example,  
19 the gentleman who bought across the street, because we  
20 are already there, came in; he understood that leaving  
21 or donating money to the community center that is  
22 being developed there, as well as really paying  
23 attention to the real concerns of the community, is  
24 something that he is doing now; whereas, in his past  
25 this was never a big issue for him. So influencing

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 other developers to do community development is  
2 something that, again, is very much a part of our  
3 mission.

4 CHAIRPERSON GRIFFIS: Anything else on  
5 that?

6 (No response.)

7 Let's take some quick questions, if  
8 there's any. My first is: Outside of the Homestead  
9 Program, which you say will cap your profits -- or  
10 does it set a sale of affordability?

11 MS. SCHRODER: It sets the scale of  
12 affordability.

13 CHAIRPERSON GRIFFIS: Okay.

14 MS. SCHRODER: I think what Steve was  
15 discussing was, because of those issues and the cost  
16 of the development, it isn't about the profit in this  
17 case.

18 CHAIRPERSON GRIFFIS: Sure, sure.  
19 Understandable.

20 Outside of that, is there any other  
21 programmed aspect to this?

22 MS. SCHRODER: We will be tying in at the  
23 end of the development process. ARCH Training Center  
24 has a Youth-Build Program, and they will use some of  
25 the community space. There's a big room that can't be

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 developed as an apartment. So it will be used as just  
2 a space that is open for the folks that live inside of  
3 the development. The Youth-Build students will help  
4 with part of their curriculum, learning how to do the  
5 electric and drywall and such, which is one of ARCH's  
6 programs.

7 CHAIRPERSON GRIFFIS: Right. So you're  
8 going to keep ownership of some of the --

9 MS. SCHRODER: No. No, we won't. It will  
10 be 100 percent of the building will be sold.

11 CHAIRPERSON GRIFFIS: Okay.

12 MS. SCHRODER: It has to be sold 100  
13 percent. But at the end of the process, Youth-Build  
14 will get involved. So it will be part of the training  
15 program; it will tie ARCH into it.

16 CHAIRPERSON GRIFFIS: Your list of who you  
17 are selling to, that's coming from maybe DHCD, and to  
18 qualify --

19 MS. SCHRODER: We have to work with DHCD.  
20 We will have to personally qualify each candidate that  
21 owns the building, and they will have to go through a  
22 DHCD course for homeownership.

23 CHAIRPERSON GRIFFIS: Sure. So when it is  
24 all said and done, moved in, sold, it will look no  
25 different than a straight fee simple condo project?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 MS. SCHRODER: Absolutely. I mean there  
2 will be a \$10,000 asset turned over from DHCD to the  
3 homeowner, that if they own it within a certain  
4 amount, part of their mortgage will be excused.

5 CHAIRPERSON GRIFFIS: Okay.

6 MS. SCHRODER: But other than that, it's  
7 100 percent --

8 CHAIRPERSON GRIFFIS: I don't want to get  
9 too confused.

10 MS. SCHRODER: -- ownership.

11 CHAIRPERSON GRIFFIS: Okay. The last  
12 thing is in the application as it was submitted; in  
13 the preliminary hearing there was talk of this Lot  
14 711, and it looks like we have a diagram in front of  
15 us that shows its utilization.

16 MS. GIORDANO: I'm sorry, the architect  
17 was going to address that. But, also, I'm going to  
18 ask Steve to address the van purchase proposal that  
19 they are going to include as part of this project.

20 CHAIRPERSON GRIFFIS: Okay.

21 MS. GIORDANO: Steve, why don't you go  
22 first?

23 MR. SHAFF: Sure. Again, one of our  
24 primary objectives is to do green development. That's  
25 one aspect of our plans for being as creative as

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 possible.

2           There's a couple of concerns there.  
3 Obviously, green, we want to minimize the amount of  
4 asphalt. Two, we want to keep costs down because,  
5 again, it is very limited affordable housing.

6           Then the other issue is, frankly, I'm a  
7 pretty devote environmentalist. The less people who  
8 need to own a car at this facility I think really adds  
9 to the value of buying at this facility.

10           A lot of people need a van or a car just  
11 to get back and forth to work, in this case the Metro,  
12 which is less than three-quarters of a mile away.

13           So the idea, not only for this project but  
14 for others, is to bring in a community van that will  
15 help keep costs lower for the individual buyer. It is  
16 an additional amenity, as well as the fact that it is  
17 environmentally-sound. In this particular case we  
18 feel it really addresses some of the parking pressures  
19 of the area.

20           So there's several reasons why we wanted  
21 to include this. We did not put this on the table  
22 before because we didn't realize it was an issue.  
23 But, again, this is a component that we as developers  
24 want to factor into all our condo developments,  
25 including the one we are involved with in Washington

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 Highlands.

2 Kids after school should be able to have  
3 transportation to local good rec centers, the Boys and  
4 Girls Clubs, that type of thing. That's what the  
5 purpose of the van will have here.

6 MS. GIORDANO: So the van will be  
7 purchased by the developer and become the property of  
8 the homeowners' association for managing some ride-  
9 sharing shuttle to the Metro and, as Steve mentioned,  
10 the possibility of outings for kids. It will be under  
11 their management.

12 CHAIRPERSON GRIFFIS: Where are they going  
13 to park it? Oh, wait, we'll get to that later, I  
14 think.

15 (Laughter.)

16 MR. SHAFF: The proposal for the van sort  
17 of spells out our preliminary analysis of the  
18 feasibility of this. It does make sense. Of course,  
19 we will narrow down the details as we get further  
20 along in the project.

21 MS. GIORDANO: Okay, I'll ask the  
22 architect now to -- do you want to start with the lot  
23 or do you want to start with an overview of the  
24 project?

25 MR. KEARLEY: Let me give an overview of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the project and then we will talk about the adjacent  
2 lot.

3 My name is Greg Kearley. I'm with Inscape  
4 Studio. I'm a principal at Inscape.

5 We have a longstanding commitment to the  
6 work in Southeast. We have been working with ARCH,  
7 groups like African Heritage Dancers and Drummers, and  
8 Wilkinson Elementary School recently. So it is a part  
9 of the City that we have been engaged in and,  
10 hopefully, are part of.

11 The overall project description -- and you  
12 have, I believe, plans in front of you -- is 29 units.  
13 Nineteen of those are two-bedroom, one-bath; two are  
14 two-bedroom, two-bath, and eight are one-bedroom, one-  
15 bath. The typical unit is approximately 800 square  
16 feet and two-bedroom, one-bath.

17 There's some room left in the development  
18 which is about 2800 square feet which will be used  
19 later for a community room, and that is not defined  
20 yet, but it's not being developed with this particular  
21 application.

22 We are doing things to the building. We  
23 are making it accessible to meet code. As Steve  
24 mentioned, we are designing the building to be  
25 environmentally-sensitive, including a green roof,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 Energy Star appliances, low VOC paints and sealers,  
2 materials that have a high content of recyclable  
3 material in them.

4 So that is a quick overall of the  
5 parameters of the site.

6 We are asking for a parking variance,  
7 nothing really to do with the space. So we didn't  
8 bring any graphics to describe that.

9 CHAIRPERSON GRIFFIS: Right. I don't  
10 think we need to go too far into it.

11 The numbers are a little different on the  
12 units, though. Just for clarification, you had how  
13 many studios?

14 MR. KEARLEY: We have no studios now.

15 CHAIRPERSON GRIFFIS: Okay, so that's the  
16 change because we had two studios. So you have eight  
17 one-bedrooms and --

18 MR. KEARLEY: We have eight one-bedrooms,  
19 one-bath; two two-bedrooms, two-bath; and nineteen  
20 two-bedroom, one-bath.

21 CHAIRPERSON GRIFFIS: Got you. Okay. The  
22 same total amount though?

23 MR. KEARLEY: Yes.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. KEARLEY: I'm going to address the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 parking issue now. We do have a board for that. It  
2 is the lot that is adjacent to our property.

3 MS. GIORDANO: And this in response to a  
4 suggestion by the Office of Planning that we explore  
5 purchasing that. I don't think Steve mentioned it  
6 specifically, but there is an ownership problem that  
7 we explored. Apparently, there is quite a bit of back  
8 taxes that are owed on this lot, and the owner is not  
9 somebody that is easy to find. So there's that issue  
10 as well as other constraints that the architect is  
11 going to mention.

12 CHAIRPERSON GRIFFIS: Well, wait. So you  
13 don't have control of --

14 MS. GIORDANO: We are not proposing to  
15 purchase the lot, no.

16 CHAIRPERSON GRIFFIS: Then we probably  
17 don't need to talk about it, right?

18 MS. GIORDANO: Well, the issue was raised  
19 by the Office of Planning. We just wanted to address  
20 it.

21 CHAIRPERSON GRIFFIS: Okay.

22 MS. GIORDANO: If you don't think it is  
23 important -- so what we are trying to say it is --

24 CHAIRPERSON GRIFFIS: We could all have a  
25 lot of fun. I could tell you what to do with the rest

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 of the block.

2 (Laughter.)

3 But I'm not sure what we want to do.

4 Mr. Jackson, what I understood -- and I  
5 will hear your comments on this -- I understood you,  
6 and actually I was intrigued; it was a good idea to go  
7 after it. Are you wanting them to explore how they  
8 would utilize it if they received it?

9 MR. JACKSON: Mr. Chairman, again, Arthur  
10 Jackson, D.C. Office of Planning.

11 We met on the site. I mentioned the  
12 opportunity that might exist for the property, and  
13 they pursued it. I was satisfied with their effort  
14 and the response that they gave, that they had made  
15 contact and were having issues with finding what could  
16 be determined as the legitimate person to make  
17 negotiations with.

18 But, based on the merits of the  
19 application, we think that the variance should be  
20 granted. So we are not requiring that they move  
21 forward. We are going to try to give whatever  
22 assistance we can to see if they can acquire the  
23 property. But given the existing situation, it  
24 doesn't appear like that is a probability at this  
25 time.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: Right, and I  
2 certainly wouldn't think it is a probability for our  
3 discussions today, the application that is here before  
4 us.

5 I think it is pretty clear that you are  
6 about to tell us that, if you were to acquire it, you  
7 could fit four parking spaces in there. We can leave  
8 it at that.

9 MR. KEARLEY: Yes. I don't even think we  
10 can legally do that, but we are just showing some  
11 spaces. There is a practical difficulty that we won't  
12 be able to get the parking because of the width of the  
13 lot --

14 CHAIRPERSON GRIFFIS: Right.

15 MR. KEARLEY: -- and the required drive  
16 aisle and parking size dictated by the District; that  
17 we explored the option and we don't think it's a  
18 feasible option.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. KEARLEY: I can leave it at that. I  
21 don't know if I need to really get in and explain it.

22 CHAIRPERSON GRIFFIS: Do we have a hand-  
23 held mic anywhere? Oh, there it is. Okay.

24 Yes, I think you're going to tell us --  
25 that's fine. That would have to be a two-way drive

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 aisle. Is that what you're saying?

2 MR. KEARLEY: It would have to be a two-  
3 way drive aisle, and the access to it -- there's not  
4 enough room to turn around and there's no place to --  
5 you can't go through someone else's property for a  
6 one-way drive aisle.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. KEARLEY: So even if you did park this  
9 way, you would have to back all the way out of the  
10 parking, out of the lot, to get out of the space.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. KEARLEY: So it doesn't seem like it's  
13 a viable alternative for parking to acquire this lot.  
14 The lot is actually in a historic district. I doubt  
15 that historic would want to build a parking lot on a  
16 historic site.

17 CHAIRPERSON GRIFFIS: Well, we don't want  
18 to speak for them, but, nonetheless -- okay, there it  
19 is. There's no curb cut there, is what you're saying?

20 MR. KEARLEY: There is a curb cut there.

21 CHAIRPERSON GRIFFIS: There is? Into 711?

22 MR. KEARLEY: I believe there's a curb cut  
23 on D Street.

24 CHAIRPERSON GRIFFIS: I see. Okay. There  
25 it is.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Any questions? Clarifications? I don't  
2 think it's that fruitful for us to go much further  
3 than just describing the submission.

4 MS. GIORDANO: Okay, so we'll just move on  
5 to Mr. Gross' testimony. Mr. Gross is going to  
6 address the variance standards and the special  
7 exception standards.

8 MR. KEARLEY: Before Mr. Gross talks about  
9 the variance particularly, if you have the site plan  
10 in front of you when we're getting into specifics  
11 about the practical difficulty of getting parking on  
12 the site, there's physically no room on either side  
13 yards' rear yards, and the lack of curb cuts, to get  
14 any parking on the site. So I think that is very  
15 clear when you look at the site plan and you see the  
16 dimensions, that parking is not available on the site.  
17 We did explore that.

18 CHAIRPERSON GRIFFIS: Excellent.

19 MR. GROSS: Mr. Chairman, Nathan W. Gross,  
20 for the record.

21 As Mr. Kearley just mentioned, the  
22 situation is just very tight with no land area left  
23 from the building to even talk about a legal driveway,  
24 let alone parking on the side. So in terms of the  
25 exceptional condition and practical difficulty for the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 parking variance, that's pretty much it. There's just  
2 physically no space.

3 It's a 1942 building, pre-1958 zoning  
4 regulations, of course, and a non-conforming  
5 structure.

6 So that would be our exceptional condition  
7 and practical difficulty. I will go on to tests two  
8 and three.

9 As to the intent of the zone plan, the  
10 preferred use in the R-5-A zone is residential even  
11 though other uses are allowed. This building was  
12 originally constructed to be an apartment house and  
13 we're returning it to that use after some use as a  
14 community residence facility.

15 With 28 units, the parking requirement  
16 would be 29 spaces. As set forth in our pre-hearing  
17 submission, we have a parking credit of 16 spaces,  
18 leaving a variance for the remaining 13 spaces.

19 As to the effect on the public good, we  
20 believe the building, when occupied, will have limited  
21 adverse effects from the lack of parking for several  
22 reasons. There are three bus stops within two blocks  
23 at 16th and Good Hope Road, Southeast, and these stops  
24 serve six routes, including connections to the  
25 Anacostia Metrorail station.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1           Mr. Shaff has set forth his proposal to  
2           buy the shuttle van, which would be, of course, a  
3           major help in getting people around. There's a  
4           reasonable amount of curbside parking in the vicinity.

5           We do have a reduction in intensity of use  
6           from the 115 community residence facility. We project  
7           approximately 75 to 80 residents in these 29 units,  
8           given the unit mix.

9           The moderate-income residents will not  
10          have as high of an automobile ownership level as would  
11          market-rate or upper-income apartments. As mentioned  
12          by Mr. Shaff, they must be maintained as affordable.

13          The Department of Transportation has  
14          expressed to the Office of Planning that they have no  
15          objection to the requested variance.

16          Finally, a key point is this building has  
17          been vacant for a number of years. Of course, in a  
18          vacant condition it is a drag on the neighborhood,  
19          potential aggravation of crime, and decline in  
20          property values, and just neighborhood quality.

21          It will either continue to be vacant or be  
22          re-occupied by some use. Whatever use that is will  
23          require a parking variance and possibly other relief  
24          such as special exception.

25          I guess I would just comment that there

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 are uses that the building could be put to that would  
2 probably have more significant parking and traffic  
3 effects on the neighborhood. One would be a fairly  
4 large child development center or a private school or  
5 a charter school, just to name a couple that would  
6 require special exceptions as well as the parking  
7 variance.

8 So, all in all, we believe that the  
9 building can be re-occupied as proposed with the  
10 parking variance with no adverse effect on the public  
11 good, and, indeed, positive effects on the  
12 neighborhood and the housing supply.

13 I believe that concludes our presentation,  
14 Mr. Chairman.

15 CHAIRPERSON GRIFFIS: Excellent. Thank  
16 you very much.

17 A couple of quick questions in your  
18 analysis: First, it's my understanding in the record  
19 that the past use was stopped more than three years  
20 ago, is that correct?

21 MR. GROSS: Yes.

22 CHAIRPERSON GRIFFIS: It would not be a  
23 conforming use in the regulations currently?

24 MR. GROSS: Well, I had a number of email  
25 exchanges with Mr. Jackson of OP and Faye Ogunnage of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 the Zoning Administrator's Office on that.

2 I believe that Section 2005 does not apply  
3 because it's not a non-conforming use, and, therefore,  
4 it wouldn't be applicable. The reason for that is  
5 that the 1979 C of O for the community residence  
6 facility was a matter-of-right C of O. Then the CBRF  
7 regulations were adopted in either 1980 or 1981. At  
8 that point the use would have required a special  
9 exception.

10 In the definition of non-conforming use  
11 there's a couple of sentences that say: a use  
12 originally established as a matter of right and then  
13 requiring a special exception is a conforming use.  
14 For that reason, I don't believe that the non-  
15 conformity provisions or the discontinuance clause  
16 applies to the use.

17 CHAIRPERSON GRIFFIS: Would they have  
18 needed parking relief even when the relief for the use  
19 went to special exception? Would they have not had to  
20 come in? Or would you also have thought that that  
21 would have been conforming?

22 I guess the point is, fundamentally, it  
23 doesn't -- in this specific application I think I  
24 could say directly it doesn't matter.

25 MR. GROSS: That's my thought.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: I mean, what we're  
2 looking at as either 13 or 29.

3 MS. GIORDANO: Right, but I think the  
4 credit would have applied, so there wouldn't have been  
5 a parking problem; it was established as a matter-of-  
6 right use.

7 CHAIRPERSON GRIFFIS: Right. So what were  
8 the number of units originally, though? How many were  
9 there?

10 MR. GROSS: Before the CBRF?

11 CHAIRPERSON GRIFFIS: Right.

12 MR. GROSS: Now that I do not have  
13 information on.

14 CHAIRPERSON GRIFFIS: Do you know how many  
15 units there were, roughly.

16 MR. KEARLEY: How many for this --

17 CHAIRPERSON GRIFFIS: When it was  
18 originally built in 1942, what was it built? How many  
19 apartments?

20 MR. KEARLEY: I don't know because when we  
21 came in there to document the facility it had been a -  
22 -

23 CHAIRPERSON GRIFFIS: It was reconfigured?

24 MR. KEARLEY: It was reconfigured. So we  
25 don't have the actual configuration of the original

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 apartment building.

2 MS. SCHRODER: I do know that when it was  
3 being used as a community room, just the way the  
4 apartments were configured, there were no bathrooms  
5 and kitchens in each because everything was community.  
6 There were more people than 29 units would hold  
7 because of how many individual rooms they had.

8 CHAIRPERSON GRIFFIS: Right. I don't  
9 question that.

10 MR. KEARLEY: But the original use we  
11 don't know.

12 CHAIRPERSON GRIFFIS: Right.

13 MR. GROSS: But it's possible that it  
14 would have required some variance relief, but in terms  
15 of specific discontinuance, it is my opinion that it  
16 doesn't apply. But, as you say, Mr. Chairman, it's  
17 maybe not the most important issue here when we're  
18 going back to an apartment house.

19 CHAIRPERSON GRIFFIS: Yes, it's somewhat  
20 moot, the number, because we're looking at an entire  
21 relief from it, but it's an interesting point that  
22 Office of Planning brought up. I think we'll get to  
23 another one of their points, but that's whether a  
24 special exception is also required, if I'm not  
25 mistaken, under 343, which is the residential

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 requirement.

2 MR. GROSS: Yes, my understanding of that  
3 is that the intent of that is to apply to new  
4 construction rather than re-occupancy of an existing  
5 apartment house.

6 CHAIRPERSON GRIFFIS: Okay. Well, I'll  
7 wait for the Office of Planning --

8 MR. GROSS: Sure.

9 CHAIRPERSON GRIFFIS: -- to provide that  
10 position, and then we can have further discussions on  
11 that.

12 Very well. Anything else?

13 MS. GIORDANO: No.

14 CHAIRPERSON GRIFFIS: Any other questions  
15 from the Board? Clarifications?

16 (No response.)

17 Not any? Indeed.

18 Is the ANC present? Do you have any cross  
19 examination of any of the witnesses? Yes? Excellent.  
20 Come on forward.

21 MS. HUDSON: Good afternoon, everyone. My  
22 name is ANC Commissioner Latesha Hudson, 8A04.

23 My question is the original zoning. It  
24 was actually zoned for R-3. Exhibit C within their  
25 packet that they submitted to you, the Office of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Zoning, if you look at the actual location of the  
2 building, it's within R-3 zoning, not R-5. Therefore,  
3 the density would have to change, the number of units.

4 CHAIRPERSON GRIFFIS: You're asking Mr.  
5 Gross or --

6 MS. HUDSON: I'm actually asking the D.C.,  
7 the Zoning Specialist for the Office of Zoning, Arthur  
8 Jackson, about the zoning.

9 CHAIRPERSON GRIFFIS: Office of Planning?

10 MS. HUDSON: Office of Planning. The  
11 actual zoning, the R-3 zoning.

12 CHAIRPERSON GRIFFIS: Well, why don't we  
13 ask Mr. Gross that question first?

14 MS. HUDSON: Mr. Gross, whoever would like  
15 to address it.

16 MR. GROSS: Well, in looking at the  
17 current zoning atlas, it appeared to me that the  
18 property is within the R-5-A district.

19 MS. HUDSON: That's something that you  
20 submitted.

21 CHAIRPERSON GRIFFIS: I think we need a  
22 color copy.

23 MS. HUDSON: So that would change the  
24 amount of occupancy?

25 CHAIRPERSON GRIFFIS: Your question to him

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 is, does it fall in the R-5-A?

2 MS. HUDSON: Yes, but it doesn't fall  
3 within the R-5-A or the R-5-3.

4 CHAIRPERSON GRIFFIS: Okay.

5 MR. GROSS: I believe it falls within the  
6 R-5-A.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. KEARLEY: That was our interpretation  
9 when we looked at it as well. It's hard to tell on  
10 this black and white.

11 MR. GROSS: I think what's happening,  
12 again, is that the photocopy is making some of the  
13 lines of streets indistinguishable from the zoning  
14 lines.

15 MS. HUDSON: Okay. Also, with the cross  
16 examination, the driveway, the curb cuts you're  
17 speaking of --

18 CHAIRPERSON GRIFFIS: Ms. Hudson, take  
19 that microphone. Thank you.

20 MS. HUDSON: Looking this way, there's  
21 actually --

22 CHAIRPERSON GRIFFIS: You're not on it.  
23 Is it on (referring to microphone)? It's still not.  
24 I'm sorry, but you've got to be on the record, so  
25 we're going to get this right.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MS. HUDSON: I have testimony from some  
2 individuals from ARCH as well as Community Vision when  
3 they came to my ANC meeting on March, that they  
4 actually do know who owns this property, the lot right  
5 here.

6 CHAIRPERSON GRIFFIS: Okay.

7 MS. HUDSON: ARCH actually owns this lot,  
8 and the reason why we're highlighting this point was  
9 that we were asking them to try to join the two  
10 projects together, because in the next several months  
11 they'll actually come for permits to develop this as  
12 well.

13 CHAIRPERSON GRIFFIS: So your question to  
14 them is, don't you own the adjacent property, Lot 711?

15 MS. HUDSON: Yes, yes.

16 MS. SCHRODER: We don't. While we were  
17 doing the research -- we do own the property you're  
18 speaking of. The property that we were talking about  
19 is a separate lot that has nothing on it that was  
20 found by Arthur Jackson.

21 Hold on. Let me speak to V Street as  
22 well. ARCH Training Center also does have the rights  
23 to develop V Street through the same Homestead  
24 Program. According to this Homestead statute -- and  
25 I spoke with Bob Muldering about this over a year ago

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 before we started the permitting process, as to  
2 whether or not we could utilize that space for  
3 parking. That's why we halted the development on V  
4 Street.

5 Bob Muldering from DHCD said there's no  
6 way; it's a statute that all the homes or properties  
7 have to be used for low-income housing. We are not  
8 allowed to do anything to that property besides low-  
9 income housing.

10 CHAIRPERSON GRIFFIS: Okay, what are you  
11 talking about? What's V Street?

12 MS. SCHRODER: She's speaking -- I think  
13 there's some confusion. Ms. Hudson --

14 CHAIRPERSON GRIFFIS: It's the adjacent  
15 property and there's a building, there's a structure  
16 on it, separated between Lots 711 and the two  
17 properties?

18 MS. SCHRODER: Yes, yes.

19 CHAIRPERSON GRIFFIS: You own both? You  
20 gained them out of the Homestead Program, is that  
21 correct?

22 MS. SCHRODER: Yes, yes.

23 CHAIRPERSON GRIFFIS: You've asked whether  
24 you could actually park, accessory parking lot for  
25 this building on that other lot --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MS. SCHRODER: Yes.

2 CHAIRPERSON GRIFFIS: -- that you call the  
3 V Street Project?

4 MS. SCHRODER: Yes, correct.

5 CHAIRPERSON GRIFFIS: It's fairly clear.

6 MS. SCHRODER: Just to Ms. Hudson, there  
7 is a third lot that's located in the back of Fendall  
8 Street that we didn't know existed that someone  
9 actually owns. That's the property we were speaking  
10 to in regards to that we don't own it.

11 MS. HUDSON: Okay, thank you.

12 MS. SCHRODER: You're welcome.

13 MR. SHAFF: We did find the tax  
14 certificate holder of the lot.

15 CHAIRPERSON GRIFFIS: Which lot? Now  
16 we've got four lots in play.

17 MR. SHAFF: The lot that Mr. Jackson had  
18 suggested we check out. It's a tax certificate sale.  
19 It's been a tax certificate sale for over four years,  
20 which raises a red flag. Then when we asked this  
21 particular gentleman who we talked to to show us  
22 anything to indicate that he's the one we should be  
23 negotiating with, we're still waiting for an answer  
24 from him.

25 CHAIRPERSON GRIFFIS: Okay. We've already

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 got complications in utilizing it anyway.

2 Ms. Hudson, next question?

3 MS. HUDSON: That's it as far as questions  
4 and concerns.

5 CHAIRPERSON GRIFFIS: Okay, excellent.

6 MR. JACKSON: Mr. Chairman?

7 CHAIRPERSON GRIFFIS: Yes?

8 MR. JACKSON: Just a point of  
9 clarification --

10 CHAIRPERSON GRIFFIS: Sure.

11 MR. JACKSON: -- are you clear where the  
12 R-5-A boundary is then? The Applicant also  
13 highlighted that there's a line down the middle of the  
14 block that comes down to V Street, then crosses over.  
15 That means the frontage of V Street on both sides is  
16 in the R-5-A.

17 CHAIRPERSON GRIFFIS: Yes. I'm sorry, I  
18 should have gone back to that clarification because I  
19 have actually a very clear zoning map in front of me,  
20 which made it fairly clear that it's in the R-5-A,  
21 but, again, I didn't share that with the rest of you,  
22 did I?

23 So I think it is --

24 MS. HUDSON: I have a question for the  
25 Board or someone who can answer this. How is it zoned

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 R-5-A when everything on that street is less than --  
2 they're not garden-style apartments. Those are  
3 apartment homes where there's less than three units.

4 CHAIRPERSON GRIFFIS: Excellent.

5 MS. HUDSON: I thought anything that  
6 required -- if it's going to be R-5-A, it has to be  
7 four to five units or more in each apartment dwelling.

8 CHAIRPERSON GRIFFIS: Excellent.

9 MS. HUDSON: All of those apartment  
10 dwellings have less than four units. They're three-  
11 unit apartment buildings.

12 CHAIRPERSON GRIFFIS: That's a good  
13 question. There's actually two answers to it.

14 One, it appears, just from this  
15 application, I would assert that the buildings were  
16 probably built prior to this being zoned.

17 Secondly, it's not a requirement to build  
18 to the maximum of any zone district that a property  
19 falls in, but it, obviously, is the ceiling at which  
20 you can build it to. So this, if it was a vacant lot,  
21 could be a single-family home and still in an R-5 zone  
22 district.

23 MS. HUDSON: Oh, okay. Cool. Thank you.

24 CHAIRPERSON GRIFFIS: I think we're ready  
25 to move on to the Office of Planning then.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MR. JACKSON: Mr. Chair and members of the  
2 Board, again, my name is Arthur Jackson. I'm the  
3 Development Review Specialist in the District of  
4 Columbia Office of Planning.

5 You have before you the report from the  
6 Office of Planning and the issues that have been  
7 raised. At this point I will rest on the record and  
8 make myself available to answer questions.

9 I would also point out, though, that  
10 yesterday I did fax over a copy of a response from the  
11 Department of Housing and Community Development that  
12 recommended approval of this proposal as presented.

13 With that, that concludes the Office of  
14 Planning's brief summary, but we continue to recommend  
15 approval of the variance as requested.

16 CHAIRPERSON GRIFFIS: Excellent. Thank  
17 you very much.

18 Questions?

19 (No response.)

20 Let's explore a little bit more 353 then.  
21 How did your analysis lead to the conclusion that an  
22 existing structure that was being modified would fall  
23 under that?

24 MR. JACKSON: Well, basically, we looked  
25 at the chain of use on the property. We noted back in

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 1977 it was -- let's see -- back at the COs on the  
2 property. In the early, I guess the forties, it was  
3 an apartment building. Then it went from being an  
4 apartment building to an apartment building and a  
5 boarding house. Then it went to a boarding house.  
6 Then it went to a CBRF. It stopped being a CBRF -- it  
7 was vacant for more than three years.

8 Based on that chain and the fact that  
9 there had been no use on the property for three years,  
10 we made the determination that there actually is no  
11 established use on the property and, as such, the  
12 Section 200.4 of the zoning regulations say that --  
13 well, Chapter 1 of the zoning regulations indicate  
14 that any use that's established on the property should  
15 be consistent with the zoning regs. A multi-family  
16 use as such in R-5-A is subject to BZA review and  
17 comments by the attendant agencies.

18 So we went that track. We followed that  
19 procedure, in essence, to make sure that there was no  
20 problem when this application came in to go before the  
21 DCRA and to have the additional input from the  
22 agencies that would be both impacted by that, which  
23 would be Transportation and DHCD. In both cases  
24 neither agency had any problem with the re-  
25 establishment of apartments in this area.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1           As such, I think that was a prudent  
2           course, given the fact that it's a nice event when  
3           something is re-established, especially in a multi-  
4           family use that's going to be affordable. However,  
5           there could be some potential impacts as seen by the  
6           community, and we would like to make sure that that  
7           petition issue was addressed in advance.

8           CHAIRPERSON GRIFFIS:   Excellent.   Thank  
9           you.

10           In addition to the governmental agencies  
11           that reported in favor of the application, do they  
12           meet the rest of the test as far as your analysis went  
13           on 353?

14           MR. JACKSON:   Yes, they did.

15           CHAIRPERSON GRIFFIS:   Okay.   Any other  
16           questions?

17           (No response.)

18           Does Applicant have any cross examination  
19           of the Office of Planning?

20           MS. GIORDANO:   No questions.

21           CHAIRPERSON GRIFFIS:   Do you still  
22           disagree with 353?

23           MS. GIORDANO:   We appreciate Mr. Jackson's  
24           looking ahead, and it certainly can't hurt as we go  
25           for our permit to make it clear that this is a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 permitted use.

2 CHAIRPERSON GRIFFIS: Okay. I'm not sure  
3 we're going to reach a definitive question of that,  
4 but I think it's important to state. Mr. Jackson  
5 looked through and did the analysis, and, actually, it  
6 seems to me it hasn't been shown that it hasn't been  
7 met; 353 is a fairly low-impact requirement for  
8 special exception outside of the special exception  
9 test itself, which, of course, is a lesser burden than  
10 the variance which you're in for anyway. Then all the  
11 other seem to be met.

12 MR. GROSS: Mr. Chairman?

13 CHAIRPERSON GRIFFIS: Yes?

14 MR. GROSS: Ms. Ogunnage was involved in  
15 some emails there, and I thought that her final email  
16 to Mr. Jackson on it was that Section 353 would not  
17 apply to this. But I agree it's a close call on this.  
18 As Ms. Giordano said, we appreciate Mr. Jackson's  
19 thoroughness in bringing it up in case it's needed.

20 CHAIRPERSON GRIFFIS: Certainly.

21 MR. GROSS: I don't know if the Board has  
22 any recent precedence on this of re-use of existing  
23 vacant apartment houses as a matter of right in R-5-A.

24 I believe the original legislative intent  
25 of the amendments to the R-5-A zone was to review the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com



1 site plans of new garden apartments and townhouses  
2 because there was overbuilding on large tracts of R-5-  
3 A land across the Anacostia River. I don't remember  
4 whether --

5 CHAIRPERSON GRIFFIS: I don't disagree  
6 with that, and I think it's supportable of the intent.  
7 Just as I say, the less amount of requirements that it  
8 actually sets -- its specificity is to refer it to  
9 agencies and to show us a landscape plan. It doesn't  
10 seem to really speak to new or rather re-animated  
11 existing structures.

12 Regarding Ms. Ogunnage and her opinion of  
13 it, I think that's very helpful. It's not above the  
14 Board and it's our own jurisdiction to not agree with  
15 her --

16 MR. GROSS: Sure.

17 CHAIRPERSON GRIFFIS: -- or the Zoning  
18 Administrator, for that matter. Again, I don't think  
19 we're going to be determinative of whether it will be  
20 required or not, but there we are.

21 Anything else? Any other questions?

22 (No response.)

23 Ms. Hudson, do you have any cross  
24 examination of the Office of Planning? Any questions?  
25 Do you have their report?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MS. HUDSON: No, I don't.

2 CHAIRPERSON GRIFFIS: Why don't we get you  
3 a copy of their report? It's an excellent one. In  
4 fact, why don't we make sure she gets that?

5 Okay, if there's nothing further then,  
6 let's move ahead.

7 Mr. Jackson has highlighted and actually  
8 had submitted in several of the government agency  
9 reports. Department of Transportation was addressed  
10 in their report and also DHCD. I believe the signator  
11 -- I have just moved it off -- was Mr. Thackleberry.

12 Are there any questions or comments on  
13 those reports?

14 VICE CHAIRPERSON MILLER: The Chairman  
15 just referred to that in 353 it asks for a landscape  
16 plan. Did you all submit one? Or no?

17 MS. GIORDANO: We have not.

18 Do you want to add anything?

19 MR. KEARLEY: Not right now. I mean the  
20 building takes up so much of the property that a  
21 landscape plan -- we'll be doing some landscaping, but  
22 it's really we didn't think it was a necessary step at  
23 this point.

24 CHAIRPERSON GRIFFIS: What's the intent of  
25 enclosing the property? It looks like there's a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 chainlink fence there currently?

2 MR. SHAFF: We'll definitely get rid of  
3 the chainlink. At the very least, we'll do wrought  
4 iron and decorative fencing in the front of the  
5 building. The back has not been determined yet until  
6 we do more planning. The facade, of course, will be  
7 redone. We will restore almost -- well, as much of  
8 everything as we can.

9 CHAIRPERSON GRIFFIS: So there's going to  
10 be some sort of perimeter fencing on the two corners  
11 and the side yard, but not on the rear? When you say,  
12 "the rear," that's not what abuts Lot 711, is that  
13 correct? It's parallel to V Street?

14 MR. KEARLEY: It would be what abuts that  
15 property.

16 CHAIRPERSON GRIFFIS: I see.

17 MR. KEARLEY: This property's frontage is  
18 on Fendall, not V Street.

19 CHAIRPERSON GRIFFIS: I got you.

20 MR. KEARLEY: So that was a rear yard, not  
21 the side yard.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. KEARLEY: I think we want to make the  
24 building as inviting as possible. So we'll be getting  
25 rid of the chainlink fence.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: Anything else?

2 (No response.)

3 Very well, let's move ahead.

4 MS. HUDSON: I have a question.

5 CHAIRPERSON GRIFFIS: Yes.

6 MS. HUDSON: I want to ask them as far as  
7 architecture and design is concerned, so what  
8 requirements do you plan to meet because it is  
9 historic? Do you plan on working with Historic  
10 Preservation or anything?

11 MR. KEARLEY: This building is not in  
12 historic.

13 MS. HUDSON: It's not?

14 MR. KEARLEY: It's surrounded by historic,  
15 but it is not in the historic district.

16 MS. HUDSON: Because it's surrounded by  
17 historic, do you plan on meeting the needs of the  
18 adjacent surrounding area as far as --

19 MR. KEARLEY: Well, we're planning on, in  
20 terms of exterior work, doing a couple of things. One  
21 is new fenestration which is in windows and doors,  
22 which we want to be consistent with original use and  
23 the original look of the windows. So we do want to  
24 restore the building.

25 We are not making any additions or

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 alterations to the building except possible repointing  
2 new windows and doors. We are having a handicapped-  
3 accessible ramp which is going to be required.

4 So in terms of, since we aren't making any  
5 additions or alterations, it's really some restoration  
6 to the building.

7 CHAIRPERSON GRIFFIS: What kind of windows  
8 are you putting in, front doors? Is there any other  
9 details of note?

10 MR. KEARLEY: We haven't spec'ed out  
11 windows and doors. Typically, when we're going in  
12 front of BZA, we don't sort of push the project along  
13 that far. So I don't want to answer something that I  
14 just don't know right now.

15 MR. SHAFF: From a personal perspective,  
16 it's a beautiful art deco building. We want to  
17 restore as much as possible. The entrance I would  
18 like to maintain and rebuild. The only issue is the  
19 ramp and how that's going to fit in architecturally,  
20 but we are going to try to restore the building in its  
21 original grand beauty.

22 MS. SCHRODER: Obviously, the one  
23 difference, just to put it in there, is we are going  
24 to do the windows and doors as eco-friendly as  
25 possible. So the material may be different, but the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 look and feel will remain the same.

2 CHAIRPERSON GRIFFIS: So the single-pane  
3 metal windows are out?

4 MS. SCHRODER: Right.

5 MR. KEARLEY: Exactly.

6 (Laughter.)

7 I assume they're going to be aluminum  
8 windows, wood-clad aluminum windows. So aluminum on  
9 the outside, which would mirror or sort of replicate  
10 what was existing in terms of the design of the  
11 windows.

12 CHAIRPERSON GRIFFIS: And keep the lead-  
13 based paint on them.

14 (Laughter.)

15 MR. KEARLEY: Exactly.

16 CHAIRPERSON GRIFFIS: Okay. I think  
17 that's an important thing. I think it is probably  
18 valuable no matter what happens here, although you  
19 haven't taken it to that level, but just sharing it  
20 with the community might be informative, at the very  
21 least, and certainly walk through the process of  
22 decision, which would be good.

23 It looks like from the photographs and the  
24 elevations that that is a fairly impressive entrance  
25 in terms of just the scope of the building's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 architecture itself. So it would be nice to see.

2 Okay. Anything else then? Any other  
3 questions? Ms. Hudson, any other clarifications?

4 Exterior lighting, are you proposing  
5 exterior lighting on the building or the entrance?

6 MR. KEARLEY: I think lighting is great  
7 for safety. So that's something that we want to  
8 consider, definitely, at the entry. That's something  
9 we would be glad to talk to ANC and the community  
10 about, really safety issues, if they want some of that  
11 exterior lighting.

12 CHAIRPERSON GRIFFIS: Okay. What else?  
13 Anything else? Any other questions?

14 MS. HUDSON: No.

15 CHAIRPERSON GRIFFIS: Good. If there's  
16 nothing else from the Board, at this time, Ms. Hudson,  
17 I think we're ready for you.

18 MS. HUDSON: Sure. ANC-8A has delegated  
19 me to represent us on this matter. We submitted our  
20 actual how we voted in our last month's meeting as  
21 well as our petition. The reason why we don't support  
22 this project, the main reason, as stated unanimously  
23 in our voting, is that, as noted on our regularly-  
24 scheduled meeting on April the 4th, ANC-8A voted  
25 unanimously to support a motion from Commissioner

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Hudson requesting that ANC-8A oppose the off-street  
2 parking variance for ARCH Training Center and  
3 specifically expressed that the number of units be  
4 reduced to 18 to 20 units.

5 ANC-8A has authorized Commissioner Latesha  
6 Hudson to represent us in this matter.

7 One of the main issues that we have with  
8 this project is the parking variance situation.  
9 Fendall Street is a one-way street, and it's fairly  
10 large. I don't have the actual measurements to the  
11 width of Fendall Street, but what the Commission  
12 actually, and the community as a whole -- and there  
13 will be several community members testifying to this  
14 later on -- is that we would prefer them work with  
15 DDOT and maybe the Office of Planning and maybe do  
16 vertical parking in front of the building. There at  
17 the street it is zoned for three lanes and it's a one-  
18 way street.

19 If you look at --

20 CHAIRPERSON GRIFFIS: What do you mean by  
21 -- what kind of parking are you looking on Fendall?

22 MS. HUDSON: Vertical parking in front of  
23 the building.

24 CHAIRPERSON GRIFFIS: Do you mean angled  
25 parking?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 MS. HUDSON: Yes, angled parking.

2 CHAIRPERSON GRIFFIS: Okay, and would that  
3 be dedicated to this building or would it actually  
4 just be --

5 MS. HUDSON: It would be dedicated to that  
6 building, vertical parking for Fendall Street, instead  
7 of asking for an actual parking variance.

8 CHAIRPERSON GRIFFIS: My understanding is  
9 that to do that -- well, for one, I'm not sure that --  
10 well, there it is. Okay, let's continue.

11 MS. HUDSON: The reason why we ask to  
12 consider vertical parking, I mean angled parking, is  
13 because the dwelling across the street from Fendall  
14 Street, that's an outpatient medical facility. They  
15 are not allowed to drive. They are not permitted to  
16 drive. The only variance that is required for that  
17 particular dwelling across the street is that the  
18 caretakers to the dwelling have to provide parking.  
19 Therefore, they only require two parking spaces. They  
20 are willing to support the angled parking idea as far  
21 as to keep congestion down on that street.

22 Actually, there is parking in front of  
23 that building because the surrounding streets have a  
24 lot of parking situations on them already, existing  
25 parking situations. There's a lot of overcrowding.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1           So it is the group community consensus  
2           that the angled parking would probably work best in  
3           this situation. That is the only thing that the ANC  
4           is pretty much proposing.

5           CHAIRPERSON GRIFFIS: So it's the parking?

6           MS. HUDSON: Yes. We do not support the  
7           variance for parking. Actually, we would really  
8           prefer them to find a way to provide parking for the  
9           number of units that they plan on proposing.

10           Also, they are stating that they changed  
11           the number of units, but the C of O requires the  
12           maximum of 115 units. If you do the math and you  
13           multiple those numbers at 19 two-bedrooms at a maximum  
14           of five people per a two-bedroom and a maximum of  
15           three people to a one-bedroom, that will be well over  
16           the 115 people they are proposing to move into this  
17           building.

18           They stated that they were going to have  
19           anywhere from 70 to 80 residents. Well, if they have  
20           the maximum number of units in that building, they  
21           will have well over 70 to 85 units. Therefore, they  
22           can't guarantee that people are going to use their  
23           shuttle or utilize Metro. If they are deemed  
24           affordable, people will be able to afford cars.

25           CHAIRPERSON GRIFFIS: Sure, sure.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MS. HUDSON: Therefore, there will be a  
2 huge parking backlash on those surrounding streets.  
3 Right now a lot of those streets are zoned two-hour  
4 parking because it's in a commercial district, Good  
5 Hope Road.

6 CHAIRPERSON GRIFFIS: Okay, interesting.  
7 I'm not sure I followed all your numbers on that one,  
8 but I understand your point.

9 MS. HUDSON: I apologize, I brought the  
10 wrong notebook this morning. I already have my  
11 testimony and everything. I'm a little nervous now.

12 CHAIRPERSON GRIFFIS: I mean the point is  
13 very clear. I'm just not sure that the C of O's  
14 occupancy for CBRF or a community-based facility for  
15 115 persons translates directly into units or C of O  
16 for a multi-family apartment building. But I  
17 understand that the point you're making is that the  
18 amount of density that will be there, the potential  
19 for drivers --

20 MS. HUDSON: Drivers, yes.

21 CHAIRPERSON GRIFFIS: -- is at a certain  
22 level. Okay.

23 Anything else?

24 MS. HUDSON: No, not at this point.

25 CHAIRPERSON GRIFFIS: Thank you very much,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Ms. Hudson. Very well said.

2 Ms. Miller, questions?

3 VICE CHAIRPERSON MILLER: I just wanted to  
4 be clear: Have you talked to DDOT yet about your  
5 angled parking?

6 MS. HUDSON: Actually, I left them several  
7 messages. I have not gotten any response from them.

8 VICE CHAIRPERSON MILLER: Did you talk to  
9 Office of Planning about it?

10 MS. HUDSON: No. I've not gotten a  
11 response from Arthur Jackson. This is my first time,  
12 actually, even to know that the Office of Planning or  
13 anyone was involved. I have been calling around  
14 trying to get some correspondence, because we are not  
15 opposed to development. Of course, we would love to  
16 develop this building; it is just how they're doing  
17 it.

18 VICE CHAIRPERSON MILLER: And what were  
19 your numbers based on? You propose 18 to 20 units?

20 MS. HUDSON: Yes.

21 VICE CHAIRPERSON MILLER: Why did you pick  
22 those numbers?

23 MS. HUDSON: It cuts back on density and  
24 it is also kind of keeps the project somewhat  
25 affordable, to meet the affordable housing covenant.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Also, ANC-8A has a covenant for inclusionary zoning  
2 where you have to mandate -- you put aside 30 units  
3 for affordable housing as well. So it also meets  
4 those different mandates and resolutions and things  
5 that we already have on the books in our area.

6 VICE CHAIRPERSON MILLER: Thank you.

7 CHAIRPERSON GRIFFIS: Anything else? Any  
8 other questions from the Board?

9 (No response.)

10 Cross?

11 MS. GIORDANO: No.

12 CHAIRPERSON GRIFFIS: Okay, very well.  
13 Ms. Hudson, thank you very much. We do appreciate it.

14 How many people are here for this  
15 Application 17463 to provide testimony, persons  
16 providing testimony?

17 Excellent. Let's have you up now. We  
18 have four. We will give some space at the table.  
19 Then we will move ahead.

20 MS. JOHNS GRAY: Excuse me. I'm with the  
21 civic association. We applied for party status.

22 CHAIRPERSON GRIFFIS: Why don't you come  
23 up?

24 MS. GIORDANO: I guess we'll stay in case  
25 there's cross examination.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: While she's coming  
2 up, are you aware of a request for party status in  
3 this application? It would be the first time ever  
4 that we all missed it. So let's get to the bottom of  
5 this quickly.

6 MS. JOHNS GRAY: It was hand-delivered.

7 CHAIRPERSON GRIFFIS: Have a seat. Make  
8 yourself comfortable.

9 We're just going to have you state your  
10 name and address for the record.

11 MS. JOHNS GRAY: My name is Carolyn Johns  
12 Gray, President of Frederick Douglass Community  
13 Improvement Council. Our party status was filed by  
14 Bernard A. Gray.

15 CHAIRPERSON GRIFFIS: Do you know when  
16 that would have come in?

17 MS. JOHNS GRAY: It may have been just a  
18 few days before the deadline, but he hand-carried it  
19 here or to the Zoning Office.

20 CHAIRPERSON GRIFFIS: That would have been  
21 when about calendar-wise?

22 MS. JOHNS GRAY: In April, about the 27th  
23 or so.

24 CHAIRPERSON GRIFFIS: Oh, dear. My  
25 concern is, of course, if we don't have it, that's a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 big concern. Obviously, it didn't get in the record.

2 But, moving on from that, we should have  
3 taken that up as a preliminary matter and either  
4 established you as a party or not, in which case you  
5 would have participated through this hearing and been  
6 able to cross examine witnesses.

7 I am concerned that we get to the bottom  
8 of where that request is. You wouldn't have a copy of  
9 that, would you?

10 MS. JOHNS GRAY: No, I don't. And to tell  
11 you the truth, I don't know what questions Mr. Gray  
12 may have asked of these people.

13 CHAIRPERSON GRIFFIS: Okay.

14 MS. JOHNS GRAY: But he called me and  
15 asked me to come down because he got tied up in a  
16 trial. He thought he was going to be finished, but  
17 he's not.

18 CHAIRPERSON GRIFFIS: Sure, sure. Okay.

19 MS. JOHNS GRAY: But I'll give the  
20 testimony on behalf of the civic association, and I'm  
21 also a property owner that received a letter who's  
22 within the 200 feet. I can just state the questions.  
23 I mean I can do it without the questions, if you don't  
24 want me to ask them.

25 CHAIRPERSON GRIFFIS: Well, do you have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 questions of the witnesses that you've heard?

2 MS. JOHNS GRAY: Yes, I did have. I had  
3 some questions, yes.

4 CHAIRPERSON GRIFFIS: What might those  
5 have been?

6 MS. JOHNS GRAY: One, if you put on  
7 affordable housing -- you know, they come to the  
8 community and they keep talking about what's  
9 affordable. We need to know what that figure is.

10 CHAIRPERSON GRIFFIS: Okay. How do they  
11 establish affordable housing, at what level?

12 MS. JOHNS GRAY: I want to know the exact  
13 figure they're using.

14 CHAIRPERSON GRIFFIS: Sure. My  
15 understanding is that this is a Homestead Program,  
16 which the DHCD would have set the level of  
17 affordability, but we'll hear from them also. Is that  
18 correct?

19 MS. SCHRODER: Yes, it's actually DHCD  
20 that does establish that number. But because that can  
21 be a fluid number, it is 80 percent of the average  
22 median income. Just as a note, it's not the D.C.  
23 number; it's the national number, because D.C.'s  
24 salaries are so high, they use the national number,  
25 which brings the salary rate down. But, as I said,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com



1 that's a fluid number based on DHCD. They're the ones  
2 that ultimately approve each candidate.

3 CHAIRPERSON GRIFFIS: So if you were  
4 setting a price on a two-bedroom right now at 80  
5 percent of the AMI national, what would it be?

6 MS. SCHRODER: Oh, geez, I don't know  
7 because it is a fluid number. I would hate to give  
8 testimony on something that --

9 CHAIRPERSON GRIFFIS: Okay, and I'm not  
10 asking for it to be a factual basis, but do you  
11 understand what 80 percent of AMI is? You may; I  
12 don't.

13 MS. JOHNS GRAY: Yes, I understand what  
14 they're saying.

15 CHAIRPERSON GRIFFIS: Okay.

16 MS. JOHNS GRAY: And I understand why  
17 they're using the national rather than the District.  
18 Those are the things that concern us in our community.

19 Everyone who comes to us wants an  
20 exception to the rule.

21 CHAIRPERSON GRIFFIS: Sure.

22 MS. JOHNS GRAY: They have deceptions to  
23 the community. That's where that falls in. Why would  
24 you use the national instead of the District when  
25 you're trying to help people stay within the community

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 and become property owners within the community?

2 CHAIRPERSON GRIFFIS: But, actually, my  
3 understanding is what the testimony was just that the  
4 national is a better, is a lesser cost because the AMI  
5 here is higher. So if you took a percentage of a  
6 higher salary locally, then your sale could be higher  
7 for that unit. So they're doing national to make it  
8 less.

9 But I guess the bottom line is they're not  
10 setting it. What they're telling us now in their  
11 testimony is that the Department of Housing and  
12 Community Development in the District is setting that.  
13 So if we have these discussions of what should happen  
14 or not happen, or how that should change, it should  
15 happen with that agency.

16 MS. JOHNS GRAY: Well, the government is  
17 doing that so that they can place a certain type of  
18 people that they want to get off the streets or out of  
19 shelters, or what have you. They need to do what is  
20 right for our community.

21 I don't want to spend a lot of time in  
22 that area because Mr. Gray could better address that.  
23 It's just that I know that those are tactics that they  
24 use.

25 CHAIRPERSON GRIFFIS: Sure.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MS. JOHNS GRAY: And we want to make sure  
2 that whoever goes in this building stays in it --

3 CHAIRPERSON GRIFFIS: Right.

4 MS. JOHNS GRAY: -- or wants to stay in  
5 it --

6 CHAIRPERSON GRIFFIS: Sure.

7 MS. JOHNS GRAY: -- or they don't put  
8 people in who will chase other people out.

9 CHAIRPERSON GRIFFIS: Excellent.

10 MS. JOHNS GRAY: The second question was,  
11 were they going to be apartment buildings that were  
12 being rented or are they condos that are being sold?

13 MS. SCHRODER: They are condos. They are  
14 for-sale housing.

15 MS. JOHNS GRAY: Okay, the rest of the  
16 questions I won't even bother with because Mr. Gray  
17 likes to get things in the record that he can use for  
18 the appeal, because we very seldom come forward and  
19 don't have an appeal. So I'll just do the testimony  
20 for the civic association and hope I can get  
21 everything in.

22 CHAIRPERSON GRIFFIS: Excellent.

23 MS. JOHNS GRAY: Our civic association  
24 represents the Historic District of Anacostia Historic  
25 District and surrounding areas. I did not know that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 this building had been marked out of the Historic  
2 District because it is on the side of Fendall Street  
3 that is within the Historic District.

4 We are against, in opposition of the  
5 variance for the parking. Parking is premium in that  
6 area now. I don't know who did this study for these  
7 people, but parking is premium. Most of my members  
8 are senior citizens. They want to park in front of  
9 their homes or as close as they possibly can.

10 I don't know what type of residents will  
11 be moving into this apartment building that they  
12 figure they won't buy cars. People who live in  
13 shelters in Anacostia have cars. People who live on  
14 the street have cars. Very few people ride the bus in  
15 our community. You can tell by the number of cars.  
16 If any of these people rode the bus, I don't know why  
17 they would want to be bringing new people into the  
18 community to put them on that busline.

19 I have lived in Anacostia for 30 years.  
20 Riding that bus you have to stand up downtown; you  
21 have to stand up coming back home, because our bus is  
22 one of the longest routes in the city.

23 So they definitely are wrong about the  
24 public transportation. I don't care how many bus  
25 stops are there. The fact that the train station is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1       there does not matter. People drive in Anacostia. If  
2       someone is working in the evening or working at night,  
3       they do not ride the bus at night.

4               You know, the parallel parking or angled  
5       parking, that's fine. We did not discuss parking. We  
6       were just totally against the variance.

7               But in talking to the Commissioner, I'm  
8       quite sure we would go along with the angled parking  
9       because then it would give those people a place to  
10      park.

11              But I can't imagine one of my members  
12      coming home and not only can't park in front of their  
13      house, but have to park two or three blocks away.

14              I don't understand why they don't know how  
15      many units were in the building when it was an  
16      apartment building, but I remember when it was not a  
17      shelter, but a building for the St. Elizabeth's  
18      patients. It was quiet there and it was very little  
19      parking was necessary because the staff parked there.  
20      But even with the staff parking there, some of them  
21      had to park on V Street, which did cause a problem  
22      with the folks who live on V Street.

23              We have a new condo that opened up about  
24      two years ago that is just across the street from  
25      there. We had no problems with them coming for any

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 variances or anything. They made arrangements for  
2 their parking.

3 In the 2100 block of 18th Street, which is  
4 -- let me see, they're in the 2000 block of Fendall.  
5 Eighteenth is one block over. So the 2100 block has  
6 just recently opened apartment units. It would be  
7 unfair to those people if the people in this building  
8 took their parking spots.

9 On V Street there are some vacant  
10 apartments that are going to be renovated. Those are  
11 the four-unit apartment buildings the ANC was talking  
12 about. It would be unfair to those people to come  
13 home and not be able to park in front of where they  
14 live.

15 So the parking is the issue here, the main  
16 issue. They need to go back and rethink their  
17 project.

18 I mean we really resent the Department of  
19 Transportation and the Office of Planning meeting with  
20 developers and helping them to do something that's  
21 detrimental to our community and not having the  
22 decency to come before us to discuss their plans or to  
23 share their plans.

24 Now I've not talked to Mr. Jackson. So I  
25 don't know what his plans are. I've not talked to the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 Department of Transportation. It bothers me that  
2 these people are involved in something about our  
3 community and we have not gotten anything from them.

4 The size of the apartments, we did not get  
5 into how many units should be in there, but we  
6 definitely thought 15 or less would be comfortable for  
7 the community.

8 We are also concerned that they put a  
9 working-class people as a majority in the building  
10 because the apartment that was just sold as condos was  
11 a working-class building, and when they continued to  
12 put Section 8 in there and they allowed some of the  
13 people to sublet to drug dealers, or whatever, that  
14 was what emptied that building out. We want to make  
15 sure that when this building opens that it stays open.

16 We are not against the project. We would  
17 love to see some life in that building. That's a  
18 dangerous corner. V Street is an open-air drug  
19 market, and bringing in some life on that corner  
20 probably will help to reduce the crime in that area.  
21 But if you bring an element of people that the  
22 government is trying to place, and they are already  
23 involved in the drug trafficking, opening that  
24 building could be more detrimental than leaving it  
25 vacant.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 But we welcome them to the community and  
2 thank them for thinking enough to put some life on  
3 that corner. We just want them to do it properly.

4 CHAIRPERSON GRIFFIS: Excellent. Thank  
5 you very much.

6 MR. SHAFF: If I can comment?

7 CHAIRPERSON GRIFFIS: Not quite yet.

8 MR. SHAFF: Okay.

9 CHAIRPERSON GRIFFIS: A couple of  
10 questions. Just to explore a little bit, you said, as  
11 you ended, that you want to bring new life into this  
12 building, and that new life, you envision it to be at  
13 18 or 20 units or 15 units?

14 MS. JOHNS GRAY: About 15.

15 CHAIRPERSON GRIFFIS: That 15 would be --  
16 why that number?

17 MS. JOHNS GRAY: We don't want it to be an  
18 overcrowding because we have shelters in the area.  
19 Like I say, the people who do ride the bus, you have  
20 to stand up. When the bus gets to our community, it  
21 is full. When the train gets to our community, it is  
22 full.

23 CHAIRPERSON GRIFFIS: Okay.

24 MS. JOHNS GRAY: So there will be an  
25 impact; if they are saying the people will be riding

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 the bus, they will be missing buses.

2 CHAIRPERSON GRIFFIS: Okay. Mrs. Miller?

3 VICE CHAIRPERSON MILLER: I was wondering  
4 if you lived in the area in 1977-78.

5 MS. JOHNS GRAY: Yes, I did.

6 VICE CHAIRPERSON MILLER: Okay. Because,  
7 according to the filings we have, there was a rooming  
8 and boarding house there at the time.

9 MS. JOHNS GRAY: Uh-hum.

10 VICE CHAIRPERSON MILLER: Was there a  
11 parking problem then?

12 MS. JOHNS GRAY: Are you talking about in  
13 their building or the house that I live in?

14 VICE CHAIRPERSON MILLER: No, in their  
15 building there was a boarding, and I'm asking you, I  
16 guess, if you lived in your building at that time.

17 MS. JOHNS GRAY: Yes, I lived there in  
18 1977.

19 VICE CHAIRPERSON MILLER: Was there a  
20 parking problem on your street when there was the  
21 boarding and rooming house?

22 MS. JOHNS GRAY: Not that I am aware of.  
23 I came into the civic association in 1978, I think it  
24 was in 1978. We didn't have a lot of complaints about  
25 parking.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1                   As I stated, in that area it was a working  
2                   class of people. So they may have, you know, back  
3                   then they may have ridden a bus then.

4                   VICE CHAIRPERSON MILLER: Okay, thank you.

5                   CHAIRPERSON GRIFFIS: Any other questions  
6                   from the Board?

7                   (No response.)

8                   Cross?

9                   MS. GIORDANO: No questions.

10                  CHAIRPERSON GRIFFIS: Okay, very well.  
11                  Let's go ahead. Thank you very much.

12                  Were there others? Yes, come on up. Are  
13                  there others that are going to provide testimony?  
14                  Anybody else?

15                  MR. CLARK: Good afternoon. My name is  
16                  Marcus Clark. I'm here as the homeowners' association  
17                  for the condominium which was previously mentioned on  
18                  the corner of Fendall and V Streets.

19                  CHAIRPERSON GRIFFIS: And your address,  
20                  Mr. Clark?

21                  MR. CLARK: 2100 Fendall Street, Unit No.  
22                  1.

23                  CHAIRPERSON GRIFFIS: Thank you. Go  
24                  ahead.

25                  MR. CLARK: I think it's incorrect to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1       assume that just because something will be labeled as  
2       affordable housing that the buyers will not have cars.  
3       Our units were sold at \$120,000 early last year, 2005,  
4       and 13 out of our 14 owners do have cars. Some have  
5       more than one. Some are couples.

6               So we have a small parking lot which is  
7       across the intersection from the project. We also are  
8       excited about the project, but we have a small parking  
9       lot in front of our building. We feel that the  
10      variance will push their building's residents into our  
11      parking space, which on occasion we are unable to  
12      occupy due to the overcrowding on V Street.

13             CHAIRPERSON GRIFFIS: Is it a private  
14      parking --

15             MR. CLARK: It's not private parking.  
16      It's not blocked off or anything. I'm not sure what  
17      the regulations are on this. We actually have been  
18      working to acquire that property.

19             CHAIRPERSON GRIFFIS: Got you. Okay, we  
20      won't talk too much about it. You might have  
21      competition.

22             MR. CLARK: Oh, okay. All right. All  
23      right.

24             But we also feel that the variance will  
25      push the overcrowding in the neighborhood on that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 intersection, on that corner considerably.

2 CHAIRPERSON GRIFFIS: Excellent. Anything  
3 else?

4 MR. CLARK: That's all.

5 CHAIRPERSON GRIFFIS: Good. Don't go too  
6 far.

7 Let me just try to understand where your  
8 building is. We are looking at the site map there  
9 where V Street is projecting north-south for that, and  
10 then you are? That's you right across the street?  
11 Excellent.

12 And your parking then, where is that?  
13 It's on Fendall or it's on V? I see, it's right off  
14 that area, right off --

15 MR. CLARK: We go right off the map.

16 CHAIRPERSON GRIFFIS: Okay. Interesting.

17 MR. JACKSON: Mr. Chairman, if you look at  
18 the Office of Planning report, the second aerial --

19 CHAIRPERSON GRIFFIS: Yes.

20 MR. JACKSON: -- you can see the existing  
21 building, the apartment buildings across to the north,  
22 across V Street, and I believe yours is a four-story?

23 MR. CLARK: Fourteen units.

24 MR. JACKSON: It's a four-story building?

25 MR. CLARK: Yes.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MR. JACKSON: Okay. Then his apartment  
2 building would be the four-story apartments in the  
3 back, just north of -- well, just south of V Street.

4 CHAIRPERSON GRIFFIS: So that green area  
5 is the parking area?

6 MR. JACKSON: It looks like a natural  
7 grass, dirt area. It's north of the green area.

8 CHAIRPERSON GRIFFIS: You're parking on  
9 the area that abuts Fendall Street, is that right?

10 MR. CLARK: Correct.

11 CHAIRPERSON GRIFFIS: Okay. Interesting.  
12 Okay. Good.

13 Any other questions from the Board for Mr.  
14 Clark?

15 (No response.)

16 Is there any cross?

17 MS. GIORDANO: No, no cross.

18 CHAIRPERSON GRIFFIS: No cross.

19 Thank you very much. We do appreciate it.

20 Good afternoon.

21 MS. MARY MILLER: Good afternoon. My name  
22 is Mary Miller, and I live at 1663 U Street,  
23 Southeast. In fact, my house is right on the corner  
24 of Fendall and U. So this property is adjacent to my  
25 back yard.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1                   We are having problems now with parking,  
2                   so I can imagine what it is going to be like if it's  
3                   29 units. I heard you say that it was going to be  
4                   condos, but my letter says apartments, 29-unit  
5                   apartments. So I want to know what it's going to be,  
6                   if it's going to be condos, homeownership, or is it  
7                   going to be apartments?

8                   CHAIRPERSON GRIFFIS: Okay, let's address  
9                   that right away. Your letter was from the Office of  
10                  Zoning announcing this?

11                 MS. MARY MILLER: Yes. Yes.

12                 CHAIRPERSON GRIFFIS: Okay. I would trust  
13                 more the testimony here that it's condos than the  
14                 letter of announcement that went out that may not have  
15                 been technically correct. Am I correct in stating  
16                 that?

17                 MR. GROSS: Mr. Chairman, my comment would  
18                 be that there are people in the public and in the real  
19                 estate business who always use "apartment" to refer to  
20                 rental and then "condos" are ownership. I tend to use  
21                 the zoning terminology, which is that it is defined  
22                 physically as apartment and then the ownership, if  
23                 it's owned, then it is condominium, or it could be a  
24                 rental. So if our statement was the source of it,  
25                 then I use "apartments" generically in that way,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1       whether it's ownership or rental.

2                   CHAIRPERSON GRIFFIS:   And that's a good  
3       point.   That's probably the basis of the confusion  
4       when it went out from the Office of Zoning.

5                   It would matter not for the zoning  
6       regulations whether this was a condominium or a rental  
7       apartment because we are, obviously, looking at more  
8       area and, like today, parking requirement.   So the  
9       confusion, hopefully, has been lifted in that this is  
10      a ownership product.

11                  MS. MARY MILLER:   Okay.   Ms. Miller was  
12      asking, because I've been there like 33 years, and she  
13      was asking about the building before when I moved  
14      there.   It was like a halfway house for senior  
15      citizens, you know, patients from Saint E Hospital.  
16      That's what it was before it was closed.

17                  CHAIRPERSON GRIFFIS:   Good.

18                  MS. MARY MILLER:   So that's my main  
19      concern, is the parking, because we are having a  
20      problem with parking now.

21                  CHAIRPERSON GRIFFIS:   Okay.   Excellent.

22                  Any questions?

23                  VICE CHAIRPERSON MILLER:   You have a  
24      problem parking now?

25                  MS. MARY MILLER:   Yes.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 VICE CHAIRPERSON MILLER: You personally  
2 or you --

3 MS. MARY MILLER: Well, the neighborhood  
4 on U Street. A lot of times I park on Fendall right  
5 by -- you know, it's like woods right there just  
6 before you get to this building. So a lot of times I  
7 have to park there. I can't even park on U Street.  
8 I probably won't even be able to park on Fendall  
9 Street by the time that they have 29 units there.

10 VICE CHAIRPERSON MILLER: Okay, thank you.

11 CHAIRPERSON GRIFFIS: Any other questions?

12 (No response.)

13 Any cross?

14 MS. GIORDANO: No.

15 CHAIRPERSON GRIFFIS: Very well. Thank  
16 you very much, Ms. Miller.

17 Others?

18 MS. TELESFORD: Good afternoon. My name  
19 is Peggy Telesford, and I live at 1659 U Street.

20 My back yard is adjacent to this building  
21 that you're talking about. My main concern, like Ms.  
22 Miller, is also parking and, like she said, it's  
23 stated here it's apartments, and we are concerned  
24 about that because homeownership plays a different  
25 part than when they are renting.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com



1 CHAIRPERSON GRIFFIS: Sure.

2 MS. TELESFORD: When they are renting,  
3 they don't care about the place. The trash and  
4 whatever goes on. But homeownership, they take pride  
5 in their homes. We are concerned whether it's going  
6 to be apartments or whether it's going to be condos to  
7 be as affordable homes.

8 CHAIRPERSON GRIFFIS: Excellent.

9 MS. TELESFORD: So it's basically the same  
10 concern that we have.

11 CHAIRPERSON GRIFFIS: Good. Parking and  
12 homeownership?

13 MS. TELESFORD: Yes.

14 CHAIRPERSON GRIFFIS: Good.

15 MS. TELESFORD: Exactly.

16 CHAIRPERSON GRIFFIS: Let me ask you  
17 something. You acquired this through the Homestead  
18 Program?

19 MS. SCHRODER: Yes, sir.

20 CHAIRPERSON GRIFFIS: Would the Homestead  
21 allow you to redevelop this as a rental product?

22 MS. SCHRODER: No, sir. It's 100 percent  
23 homeownership, and we won't own one unit. It will be  
24 all homeowners.

25 CHAIRPERSON GRIFFIS: Okay.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MS. TELESFORD: Okay. Well, I'm happy to  
2 hear that and I hope it would be so, because I've been  
3 living there myself now 30 -- I lived there -- I came  
4 there in 1970. When I came there, it was St.  
5 Elizabeth's patients. There wasn't anything to do  
6 with parking because, of course, they didn't have any  
7 cars. So it's going to be difficult now because, like  
8 she said, it's already bad. Parking is bad.

9 CHAIRPERSON GRIFFIS: And you don't have  
10 an alley that accesses your property, do you?

11 MS. TELESFORD: No, it's not an alley.  
12 There's no alley there.

13 CHAIRPERSON GRIFFIS: You don't have  
14 parking on your property?

15 MS. TELESFORD: No, I don't.

16 CHAIRPERSON GRIFFIS: Do you have a two-  
17 story row dwelling?

18 MS. TELESFORD: Pardon me?

19 CHAIRPERSON GRIFFIS: No, that's okay.  
20 Okay, very well. Anything else?

21 MS. TELESFORD: No, sir.

22 CHAIRPERSON GRIFFIS: Any questions?

23 (No response.)

24 Any cross?

25 MS. GIORDANO: No questions.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Thank you very much.

2 MS. TELESFORD: Thanks very much.

3 CHAIRPERSON GRIFFIS: We do appreciate it.

4 Do you have an Office of Planning report,  
5 by any chance?

6 MS. TELESFORD: An Office --

7 CHAIRPERSON GRIFFIS: Office of Planning's  
8 report? It's in the record. You might want to get  
9 it. I mention that because it's got a great aerial  
10 photograph of your house and your neighbors' houses  
11 and the adjacent properties.

12 MS. TELESFORD: Yes, sir.

13 CHAIRPERSON GRIFFIS: I get a kick out of  
14 them. You may want one also.

15 MS. TELESFORD: Very well. Thank you.

16 CHAIRPERSON GRIFFIS: Thank you very much.

17 Very well. Is there anyone else present,  
18 persons to provide testimony on 17463? In support?  
19 In opposition?

20 (No response.)

21 Very well. I think that was very  
22 informative in terms of the issues of parking and also  
23 utilization and history of this existing structure.

24 With that, then, if there's nothing  
25 further, I will ask, Board questions? Clarifications?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Ms. Miller?

2 VICE CHAIRPERSON MILLER: Well, given the  
3 testimony that we have heard, I certainly would be  
4 interested in hearing from the Applicant and from the  
5 Office of Planning with respect to their view on the  
6 parking situation.

7 CHAIRPERSON GRIFFIS: Whether that  
8 testimony changed their view on the parking? Let's  
9 start with the Office of Planning. Their view on the  
10 parking?

11 VICE CHAIRPERSON MILLER: No, their view  
12 on the parking. I don't remember Mr. Jackson really  
13 addressing it earlier. Maybe I missed it. But can  
14 you respond to the citizens that we have heard who say  
15 that the parking is already bad and that this will  
16 create a great parking problem, plus also the  
17 suggestion about the angled parking?

18 MR. JACKSON: Well, again, the Office of  
19 Planning, of course, would defer to the Department of  
20 Transportation with their analysis of the site  
21 because, obviously, we visit the site on a regular  
22 basis and can do simple computations of linear footage  
23 of street to calculate the number of cars that can sit  
24 on the street, but we would defer to the Department of  
25 Transportation, in that any real complaints about the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 parking situation or the lack of parking in an area  
2 would have been referred to them for additional  
3 discussion because they have area planners that  
4 actually are usually up-to-date on this type of thing.

5 We are looking at somewhat a new situation  
6 for the current environment, but, of course, at one  
7 time this was already apartments. Both in terms of  
8 the Department of Transportation and DHCD, their  
9 impression was that in re-establishing an existing --  
10 what previously used to be on the site, it was not  
11 seen as being draining on the site, that there would  
12 not be a specific impact, and we would generally  
13 concur with that.

14 But, of course, we also recommend to the  
15 Applicant that they do pursue every option for  
16 parking. We identified an additional lot which they  
17 have tried to make work as part of their development  
18 and haven't been able to.

19 We would support any proposals that the  
20 community would support with DHCD to look at making  
21 more parking available along the street. The idea of  
22 angled parking along the street for a distance or for  
23 the entire street appears to be something that DHCD  
24 could look at, particularly since the street is so  
25 wide.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1           So we would support that idea going  
2 forward, but, of course, that's an issue with public  
3 space. As such, it would not be something that the  
4 Applicant could affect either way, as opposed to just  
5 -- of course, they could support it.

6           So we would proceed as contacting the  
7 Department of Transportation to consider this option  
8 and possibly look forward to the Applicant working  
9 with the community to come up with some -- to review  
10 whether options are available to provide additional  
11 parking.

12           But, again, since there really is no  
13 option for them providing parking onsite, short of  
14 demolishing an existing building, which I think would  
15 diminish the fabric of the community since it has been  
16 around so long, we would like to see the building put  
17 to a use that would benefit the community in the long  
18 run and try to deal with these other problems over  
19 time, potential problems over time.

20           CHAIRPERSON GRIFFIS: Excellent.

21           VICE CHAIRPERSON MILLER: I have just one  
22 followup. When you visited the area, did you notice  
23 a parking problem?

24           MR. JACKSON: No. Of course, we went in  
25 broad daylight. We noted that, particularly on

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Fendall Street, there were no cars parked there at  
2 all.

3 MS. GIORDANO: We can also respond to  
4 that. I will ask the Applicant to give their  
5 impressions of the parking situation. We would  
6 certainly be willing to work with DDOT on exploring  
7 angled parking, but I just note that we would still  
8 need the parking variance because the parking would  
9 not be on our lot if the angled parking were to be  
10 something that could be worked out.

11 MR. KEARLEY: I just want to respond to  
12 the parking situation. I believe that Fendall you can  
13 park on both sides of the street since it is wide. So  
14 if you went to an angled parking, you're eliminating  
15 -- you wouldn't actually get more parking because the  
16 spaces, it adds up to the same amount of spaces if you  
17 calculate both sides of the street as opposed to one  
18 side of the street that's angled. I think it's going  
19 to be a wash when you get it figured out.

20 So it could be designated for the  
21 particular building, but you're still taking up a  
22 space for a space. You're not gaining any additional  
23 spaces.

24 CHAIRPERSON GRIFFIS: Interesting.

25 MS. SCHRODER: Hi. Both Steve and myself,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 and we stated this at the ANC meeting, we absolutely  
2 would love to work with the community. At that time  
3 we also understood the fact that we still have to go  
4 after the variance because it's public space.  
5 However, we would love to work with the community in  
6 any way to figure out how to get extra spaces.

7 I live in the City. I live in walking  
8 distance to a Metro. I understand every single issue  
9 the City faces every day with parking. I think it's  
10 part of the love-and-hate relationship you have of  
11 living in a city.

12 That said, there is substantial Metro  
13 access, not just the buses but also the train station  
14 and the proposal which ARCH has supported since day  
15 one of the light rail that may or may not end up  
16 happening in Anacostia, which would also be within  
17 walking distance that would go actually over the  
18 bridge eventually, which would cause the time spent  
19 traveling to greatly decrease. Again, I know that's  
20 still in development with WMATA and the Department of  
21 Transportation. But that also potentially would be  
22 there by the time this building was ready.

23 One other point I would like to just -- I  
24 know Steve will answer this better because he's in  
25 development right now with condos in another part of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 the City.

2 The 80 percent of AMI, that will probably,  
3 more than probably be working class because of what  
4 the rate nationally is of income at that level.

5 We also would love to work with DHCD to  
6 know that that is going to be there. We are fully  
7 supportive of all the main street Anacostia programs  
8 that are going on now in order to have a more viable  
9 community living there, to have a more viable  
10 community serving there.

11 We, both Steve and myself, would love to  
12 put people in these units that would be working-class  
13 citizens and will work with Bob Muldering's group to  
14 do so.

15 Also, the suggestion of 15 units or less  
16 would be improbable for us to continue development  
17 because of the cost of development. There's no grants  
18 anymore for this type of development. So it is all  
19 loans. Even the grants that are given by DHCD are  
20 actually just low-cost loans. The building would not  
21 get developed at the cost of development at this rate  
22 without its being 29 units. Steve, if necessary, can  
23 speak to that.

24 MR. SHAFF: Yes, a lot of the questions  
25 the community has are very valid. Part of that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 problem is because we haven't really sat down and met  
2 with them to explain everything. That's primarily  
3 because we are still gathering our information.  
4 There's still issues with the City that we're working  
5 out. At the appropriate time we wanted to really sit  
6 down, because half the questions that are raised here  
7 are very legitimate and can be discussed.

8 Again, our approach, and our record stands  
9 for this, shows that we come into a neighborhood  
10 because we want to work with the neighborhood. We  
11 can't be an island in a neighborhood. So a lot of  
12 these issues will more than adequately be addressed.

13 In terms of the feasibility, the  
14 affordability, and how you monitor that, the  
15 purchasers have to be within a certain income limit,  
16 which for our area is lower than national standards.  
17 They have to be first-time homeowners in D.C. So we  
18 have a very limited market here.

19 To confirm that, when we find an  
20 appropriate buyer, the City's requesting or insisting,  
21 as part of this process, that the buyer goes through  
22 their program to verify that they are, indeed, within  
23 this. So there's no way, unless we're extremely  
24 unscrupulous, that a buyer who's really hiding their  
25 BMW sets of cars up in Columbia Heights is going to be

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1       able to move in here. So there's some control there  
2       from the City.

3               In terms of the number of units, again,  
4       the configuration we have, and the size of the units  
5       we have, is actually a little bit bigger than the  
6       standard market right now. If we went down to  
7       anything less than this, the project would not be  
8       feasible. This would remain empty for quite some  
9       time. We're working within the economic reality. So  
10      those are the issues there.

11             The parking issues, obviously, we are  
12      concerned about that. It is something legitimate.  
13      Any solutions that can be done to address that,  
14      obviously, we want to look at. That's why we came up  
15      with the shuttle, because, as was pointed out, folks  
16      may not be inclined to take the bus, but they can go  
17      downstairs to the lobby. There's going to be a  
18      shuttle there several times in the morning, several  
19      times in the afternoon. So we feel that that will be  
20      both convenient and also financially sound for the  
21      purchasers of these units, who, obviously, are not  
22      going to be very affluent.

23             CHAIRPERSON GRIFFIS: Okay, any other  
24      rebuttal?

25             MS. GIORDANO: Did you want to share any

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 observations about the parking demand on the street or  
2 congestion?

3 MR. SHAFF: I like going to the  
4 neighborhoods all hours of the night, every day of the  
5 week. It doesn't matter. I like to really get a  
6 sense for it, not while it's sunny and shiny and  
7 people are walking around during the day, but all the  
8 time, including the time that church is in session up  
9 the street.

10 I had just learned, literally, this past  
11 winter that there was -- frankly, I thought there was  
12 a no parking sign on Fendall because I never ever saw  
13 cars parking there. Again, I thought it was because  
14 maybe I'm here during the day; people are working and  
15 they take their cars. But I've gone through there  
16 late evenings, weekends, and that part of Fendall is  
17 rarely used. There's not too many other cars there.  
18 Now, of course, I don't live there, but I think there  
19 is adequate room there.

20 As the project gets developed and there's  
21 other ways we can add to parking, obviously, we will  
22 look at that. There's no question about that.

23 But there will be an impact. We're not  
24 denying that.

25 CHAIRPERSON GRIFFIS: Anything else?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MS. GIORDANO: I think that concludes our  
2 rebuttal, closing, et cetera.

3 CHAIRPERSON GRIFFIS: Actually, Ms. Hudson  
4 has some cross questions for you all.

5 Ms. Hudson, you're going to limit your  
6 cross questions, of course, to that testimony that you  
7 just heard, which got you so excited. So I'm very  
8 interested to hear all these questions.

9 MS. HUDSON: It's more of a statement.

10 CHAIRPERSON GRIFFIS: Try to pose it in a  
11 question. That way, I won't have to cut you off.

12 MS. HUDSON: When you said you come by the  
13 neighborhood all hours of the day, what hours are you  
14 actually coming through? Because we actually have  
15 data that shows that a good portion of the  
16 constituents in that particular community come home  
17 after 9:00 because most of them are shift workers and  
18 they all take their cars. A good portion, 60 percent  
19 of them take their cars to work with them.

20 There is no parking on Fendall Street  
21 during the day because it's zoned parking during the  
22 day. Therefore, they cannot park up there during it.  
23 There is no parking in that area.

24 CHAIRPERSON GRIFFIS: There's two  
25 questions in that. First of all, do you ever get to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the site --

2 MS. HUDSON: That's why there's no parking  
3 during the day.

4 CHAIRPERSON GRIFFIS: -- after nine  
5 o'clock? The second is, are you aware that there are  
6 parking restrictions during the day on Fendall?

7 MR. SHAFF: Yes. As I said, I come  
8 through at all hours because, again, if I'm thinking  
9 in terms of a buyer living there, which is how I  
10 approach this --

11 CHAIRPERSON GRIFFIS: Okay, but that's  
12 understood. You go through all hours of the day.

13 MR. SHAFF: Absolutely.

14 CHAIRPERSON GRIFFIS: Are you aware of the  
15 parking restrictions on Fendall?

16 MR. SHAFF: Well, like I said, on Fendall  
17 itself, I wasn't aware of that -- I know there's some  
18 restrictions, but I wasn't sure what all they have to  
19 do with.

20 MS. HUDSON: There are parking  
21 restrictions on Fendall.

22 MR. SHAFF: Okay.

23 MS. HUDSON: There's also street-cleaning  
24 restrictions on Fendall three days a week, and also on  
25 Fendall -- I would like to address the Board. Before

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1       you vote on this matter, we would ask for maybe a  
2       postponement until they address the community and also  
3       until DDOT comes forward to the community maybe doing  
4       a traffic survey and maybe actually addressing the  
5       situation on angled parking.

6                   CHAIRPERSON GRIFFIS: Interesting. Okay.

7                   Any other questions for these witnesses?

8                   MS. HUDSON: Do you intend on coming to  
9       our June meeting? We were informed that you wanted to  
10      come to our April and May meeting and you did not show  
11      up at our April meeting. That's where we voted. You  
12      didn't do a presentation at our May meeting. So we  
13      are requesting that you maybe come to our June meeting  
14      maybe and do something in front of the community.

15                  MR. SHAFF: I would be more than happy,  
16      and we are going to start working with the community  
17      so we can sit down to talk more in detail about what  
18      we have planned. Again, we're very involved in the  
19      communities we work with. If you would like to get  
20      information from the community members that we work  
21      with now, we certainly would be able to get you  
22      information.

23                  MS. HUDSON: Cool.

24                  MR. SHAFF: Yes.

25                  MS. HUDSON: Thanks.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MS. SCHRODER: And I just want to state  
2 for the record that we did do a presentation in March  
3 to the ANC, but Steve was not available. He had folks  
4 from Community Vision there, his folks that are  
5 working on this.

6 CHAIRPERSON GRIFFIS: Has the project  
7 changed since March?

8 MS. SCHRODER: It has not.

9 MS. HUDSON: Yes, actually, it has. The  
10 scope, you went from six one-bedrooms to eight one-  
11 bedrooms and then from 21 two-bedrooms to 19 two-  
12 bedrooms. So the scope of the project has changed  
13 since you approached the ANC.

14 MR. KEARLEY: The number of units is the  
15 same. We took two efficiencies and made them one-  
16 bedrooms. So that was the six to the eight. So I  
17 think the number of units is the same. It's just a  
18 slightly different mix of units. So I think, in all  
19 intents and purposes, it's the same project.

20 MS. HUDSON: And also the square footage  
21 of the units changed as well, and our scope means the  
22 largest two-bedroom would be 902 square feet, and in  
23 your testimony today you said it was like 800 and  
24 something.

25 MR. KEARLEY: All I said was that the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 average was 800, approximately 800 square feet, but  
2 there are units that are larger than that.

3 CHAIRPERSON GRIFFIS: Sure. Do you see  
4 that impact changing the parking?

5 MS. HUDSON: I think that as far as the  
6 unit number, it probably won't impact the parking as  
7 far as number of spaces as the variance, but I think  
8 it will probably have a change in density as far as  
9 the number of people in the building itself.

10 CHAIRPERSON GRIFFIS: I see.

11 MS. HUDSON: And that's one of the  
12 concerns that the community has, is the density of the  
13 number of people in that building. The parking  
14 variance is just one situation right now. To put that  
15 many units and that many people in that one area,  
16 that's an issue of itself.

17 CHAIRPERSON GRIFFIS: Sure, sure. Okay.  
18 Anything else?

19 MR. GROSS: Mr. Chairman, I just want to  
20 make the observation that, and this doesn't create any  
21 parking spaces, but when you're dealing with historic  
22 districts and a high percentage of the buildings were  
23 built before there was parking requirements or very  
24 many automobiles, whether that's the Capitol Hill  
25 Historic District, Georgetown, or other places that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 are not designated historic yet, such as Adams Morgan,  
2 you have a parking deficit and it's tough for people.  
3 They just have to adjust.

4 As Mr. Shaff said, I am sure he will try  
5 to find any parking exclusions he can, but if you're  
6 in a historic district, you have a lot of historic  
7 character and environmental quality, but one of the  
8 tradeoffs is parking is often difficult.

9 CHAIRPERSON GRIFFIS: Not just in historic  
10 districts.

11 (Laughter.)

12 Okay, Ms. Hudson, thank you very much. We  
13 appreciate it.

14 MS. HUDSON: Thank you.

15 CHAIRPERSON GRIFFIS: We will take it  
16 under advisement as we wind this up.

17 Let's go to closings.

18 MS. GIORDANO: I would just like the  
19 Applicant to address the issue of postponement and how  
20 that might affect project schedule. I'm sure there  
21 would be --

22 MS. SCHRODER: Just one note in regards to  
23 that: Working with some of the zoning and getting  
24 permits, and as Ms. Hudson stated earlier, she left  
25 several messages with DDOT, to no avail -- I would

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 hope that we would not get postponed because I do feel  
2 that it would be difficult to get audience with DDOT  
3 on this subject to be taken seriously at first.

4 Although we would continue to work with  
5 the community on it, I just would not want to postpone  
6 and have to go into another waiting period because  
7 every minute -- we have been working very hard on this  
8 project for over a year in configuring, went through  
9 the environmental, the engineering. To postpone it  
10 would cost us a lot of time and effort, and every  
11 penny matters on this.

12 MR. SHAFF: DHCD met with us. They are  
13 concerned about how long it is taking us to get this  
14 going. So they're pretty anxious to get this thing  
15 moving.

16 It will create additional cost to the  
17 project. Again, we're trying to fit an affordable  
18 housing project in here. It's going to have an  
19 impact.

20 CHAIRPERSON GRIFFIS: Okay.

21 MS. GIORDANO: In closing, I think that we  
22 have met the variance relief standard. We are  
23 basically dealing with an apartment building that has  
24 a credit. We're asking for a variance with regard to  
25 not a large number of parking spaces.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1           The Applicant is going to continue to work  
2           with the community. They have committed to coming to  
3           the June meeting in the ANC. We would hope that the  
4           BZA would go ahead and decide this case at their next  
5           monthly meeting, if appropriate, and allow the  
6           Applicant to continue to work with the community, as  
7           well as DDOT, on additional parking solutions that  
8           would not obviate the need for a variance.

9           Thank you.

10          CHAIRPERSON GRIFFIS: Right. I think that  
11          is an excellent point that you bring up. No matter  
12          what, DDOT might look at it, but even before we get to  
13          that, we have the Office of Planning's report that  
14          says that DDOT did not express any concern. So it is  
15          not as if they are searching for alternatives.

16          I think the impact has been well said and  
17          the testimony is persuasive that there's going to be  
18          impact once you start re-animating this building.  
19          That, obviously, is now before us to see whether it  
20          meets the threshold test of the variance.

21          Is there anything else then?

22          (No response.)

23          Very well. I do appreciate that.

24          Board members, I'll open it up to you for  
25          a brief discussion on whether we proceed today or

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 whether additional information is required for the  
2 record to be full and we set this for decision.

3 Comments?

4 VICE CHAIRPERSON MILLER: I guess I'm  
5 prepared to go forward today. I think we have DDOT's  
6 response in the record. We have Office of Planning's  
7 comments.

8 I mean I think if the reason to wait would  
9 be to get more information on the parking, I think we  
10 have enough.

11 CHAIRPERSON GRIFFIS: Others? Mr. Mann?

12 MEMBER MANN: I agree that I don't think  
13 there's any other information that we need to wait on.  
14 Given all the information that's been entered into the  
15 record and the testimony we heard today, I would be  
16 able to move forward to make a decision.

17 CHAIRPERSON GRIFFIS: Very well. Any  
18 opposition to move forward today?

19 MR. PARSONS: No, I approve of it.

20 CHAIRPERSON GRIFFIS: Okay, let's move  
21 ahead then.

22 I think I'll open it up for those to speak  
23 first or if there is a motion.

24 (No response.)

25 Okay, I think I'll try to move this on a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 little bit. I think it's appropriate to take our  
2 deliberation up, as this is a bench deliberation, to  
3 speak to it under a motion. I would move approval of  
4 Application of 17463 of the ARCH Training Center.  
5 That is for the variance of the off-street parking  
6 requirements under 2101.1. That is to allow the  
7 conversion of the vacant community residence facility  
8 which was originally built as an apartment or multi-  
9 family structure back into an apartment house, as the  
10 zoning regulations stated, but would be a condominium  
11 project of 29 units at the premises of 2025 Fendall  
12 Street, Southeast.

13 I would ask for a second.

14 VICE CHAIRPERSON MILLER: Second.

15 CHAIRPERSON GRIFFIS: I would make note in  
16 the motion, also, on this as we go into deliberations,  
17 the Office of Planning I thought made an intriguing  
18 argument. I don't think the Board has been definitive  
19 about whether actually Section 353 would be a  
20 requirement to meet that special exception, but as we  
21 are in a variance, I thought it was fulfilling in  
22 terms of just the variance test, the special  
23 exception, and those elements of the special  
24 exception.

25 I think Mr. Jackson was absolutely correct

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 in saying that it was informative to have the agencies  
2 respond to this. It also stepped us into a little bit  
3 of what the overall aesthetic exterior landscaping  
4 might be, and certainly the elements of what should be  
5 of concern to the community.

6 But that's a bit of a digression. The  
7 uniqueness I think is unequivocal in this in that the  
8 building was built prior to 1958. The regulations  
9 state within the requirements of variance the premise  
10 of uniqueness. One of that is if it was in existence  
11 and became not conforming to the elements when they  
12 had the adoption of the 1958 rezoning regulations.  
13 Certainly this meets this requirement.

14 Not only that is, how does it actually  
15 become non-conforming? That's the aspect that it  
16 wasn't built with parking. It is essentially land-  
17 locked, although it is on a corner property.

18 We have seen persuasive testimony that if  
19 you drove in anywhere, if you could, you couldn't park  
20 anywhere. The adjacent lot, of course, is not in  
21 discussion because it isn't under the site control.  
22 Doing the other aspects of it -- well, that  
23 establishes the uniqueness.

24 The practical difficulty right now of  
25 that, of course, is if you can't put it on the site,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1       what do you do? I suppose we could have done away  
2       with differing floors of the residential building and  
3       driven right in it, kind of parked within the  
4       building. I think we have seen in a lot of cases like  
5       that that it is not viable.

6               Certainly that didn't come up in this one,  
7       but I think we can assume that it isn't in terms of  
8       acquiring the adjacent sites or even the adjacent  
9       property that separates it from Lot 71.

10              Certainly a practical difficulty is it is  
11       also part of the Homestead Program, I understood  
12       testimony to state, and therefore, would have to go to  
13       homeownership.

14              But if we dispense with that, even just  
15       theoretically, that doesn't relieve this of some  
16       relief from the regulations that would then be  
17       establishing an accessory parking lot attendant to the  
18       primary use on the apartment. That all being said, it  
19       is fairly persuasive, the practical difficulty in  
20       providing the parking requirements.

21              I don't think we were definitive, either,  
22       in what the total relief was required, the number.  
23       However, I don't think that that's definitive for our  
24       deliberation on this because we are looking for a  
25       total relief, as none will be provided.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1           Whether it would impair the intent and  
2 integrity of the zone plan, I certainly do not see in  
3 the R-5-A as an existing structure.

4           The public good, this is what rises to, I  
5 think, very interesting discussions, and that is, how  
6 do we re-animate this building with perhaps other  
7 construction that's happened around the area, in  
8 anticipation of maybe further or future development in  
9 the area, not overburdening?

10          I think one way to look at it is actually  
11 the balancing of goods, let's say. We've talked  
12 about, and all the testimony I think was fairly  
13 supportive of, re-animating this building, but not re-  
14 animated to the detriment of the rest and the  
15 surrounding community. How do you strike that  
16 balance?

17          I'm not sure that there's anything that  
18 would rise to putting use back into this that wouldn't  
19 have a parking requirement. I think it probably  
20 better serves the public that this is used rather than  
21 not used.

22          The van is an interesting idea and an  
23 interesting program to be put forth. It's the first  
24 I have seen of anything on this level of numbers and  
25 density that this is being proposed.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 I applaud the effort and, hopefully, the  
2 implementation of it. However, it's not something  
3 that I find is a requirement for the persuasiveness  
4 and success of the variances.

5 I actually question more, and I hesitate  
6 in bringing this up because I don't want to not be  
7 supportive of the van, but I question its longevity in  
8 terms of program and in terms of management, and also  
9 in terms of the affordability. If one is putting  
10 together affordable units in a condo regime, you're  
11 also going to have your fees that are attendant to it  
12 and the responsibility of upkeep of the building. I  
13 wonder how long or whether one would want to burden  
14 all those new homeowners with the maintenance or use  
15 of this. But, thank goodness, I'm not being hired to  
16 manage it because it gives me a bit of a headache to  
17 think of it. However, in principle, it seems to be an  
18 excellent idea to afford that.

19 Hopefully, there will be further  
20 discussions as this goes forward with the other  
21 agencies in terms of maybe changing that restrictive  
22 parking on Fendall Street and also maybe changing how  
23 the parking actually takes place in the public realm  
24 that might make it more advantageous for the areas  
25 around.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1                   That's my summation for the motion. I'll  
2                   open it up to others.

3                   MEMBER ETHERLY: Thank you very much, Mr.  
4                   Chairman. I think you were right on target with your  
5                   summation, so I will not be repetitive, but I will  
6                   speak just in some detail to the issue of the ANC's  
7                   report and also the testimony on the part of the  
8                   residents who came before us and gave of their time.

9                   Although I appreciated the testimony, I  
10                  agree with the direction in which my colleague's  
11                  deliberation is heading as it relates to, in all  
12                  honesty, not necessarily being as convinced about the  
13                  traffic piece. I think you said it, Mr. Chair, in  
14                  terms of highlighting that there's probably, as we  
15                  look at bringing this building back into productive  
16                  use, there's probably very little that we could do  
17                  that will not have some type of traffic impact.

18                  I would hazard to guess that, in the  
19                  absence of the building being used in a productive  
20                  way, we have perhaps gotten comfortable with the fact  
21                  that you haven't had to deal with the traffic  
22                  component there. But I definitely appreciate the  
23                  testimony that was brought forward by the residents  
24                  here.

25                  I am swayed by the Department of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 Transportation's lack of any objection regarding  
2 traffic concerns and also the proximity of the  
3 building to adjacent Metro bus routes, which I think  
4 will help to eliminate or mitigate, if you will, some  
5 of the traffic, potential traffic impacts.

6 That is definitely not to say that there  
7 will not be something that you will feel, but I think,  
8 as the Chairman indicated here, there is an issue of  
9 balance that needs to be struck in terms of how you  
10 bring this building back into productive use and  
11 balance that with the challenges or the issues that  
12 residents might feel as a result of the building  
13 coming back online, if you will.

14 But I did not necessarily find it very  
15 compelling that the traffic impact was going to be  
16 such that you're going to be looking at utter gridlock  
17 in the community. But I want to be very clear that  
18 that is not to suggest that you are not going to see  
19 a difference, because you will have additional bodies  
20 coming back into the community.

21 But I think the focus of the zoning  
22 inquiry is to balance that inquiry and make certain  
23 that, as the Chair alluded to, especially within the  
24 context of the variance test, as you look at the  
25 intent of the zoning regulations and the overall

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 public good here, I think this outcome is, indeed, the  
2 appropriate one and supported by the argument that has  
3 been put forward.

4 Thank you, Mr. Chair.

5 CHAIRPERSON GRIFFIS: Excellent. Thank  
6 you.

7 Ms. Miller?

8 ARBITRATOR ROSS: I just want to add to  
9 all that you all have said. I mean, in general,  
10 there's the premise that most existing neighborhoods  
11 would be concerned about any development bringing in  
12 more parking.

13 But the history of this building goes way  
14 back. I want to note that before the CBRF, in 1977  
15 there was a rooming and boarding house there for 130  
16 residents. The neighbors who have been there don't  
17 remember that having a big negative parking impact.  
18 Of course, times have changed, or whatever, though I  
19 think that mass transit has gotten better also.

20 Then we were faced with asking that the  
21 number of units be reduced perhaps, but, on the other  
22 hand, we heard that if that was reduced, then the  
23 project would become infeasible. The number that was  
24 being proposed was really kind of based on an  
25 impression, I think, that that would correlate with a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 decrease in the parking problem, which was somewhat  
2 vague.

3 Also, there was nothing really to hang our  
4 hat on with respect to, well, are these residents  
5 really going to bring a lot of cars? I mean with the  
6 price of gas, or whatever, and you have a van and you  
7 have Metro, it really isn't clear how great that would  
8 be; plus, especially DDOT not seeing a problem.

9 And then there's also, when you were  
10 considering the public good, the fact that this  
11 building is being brought back to life and it's being  
12 devoted to affordable housing which is in the public  
13 good.

14 So, for all those reasons, even though I  
15 think the parking was something we were really  
16 considering, when you weigh it all together, the  
17 public good is really in favor of the project going  
18 forward.

19 CHAIRPERSON GRIFFIS: Others? Yes?

20 MR. PARSONS: Mr. Chairman, I wanted to  
21 make a run at you with this shuttle bus.

22 CHAIRPERSON GRIFFIS: Excellent.

23 MR. PARSONS: I certainly think it is  
24 worth a trial period. I wondered if you would be  
25 willing to consider a requirement that this be

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1       undertaken for a two-year period. In other words, it  
2       is either going to catch on or not, and show our  
3       support for that.

4               It seems to me there are two sides to a  
5       traffic story. That is what we have heard here today  
6       -- or parking requirements. I think it is worth our  
7       support of the concept of a van or shuttle bus,  
8       whatever the term we want to use. Van implies a  
9       smaller vehicle of some maybe 15 passengers at  
10      maximum. But the commitment seemed to be for a  
11      vehicle of about \$35,000 to \$40,000, as I remember it.

12             But I ask for your consideration of that  
13      as a condition for two years.

14             CHAIRPERSON GRIFFIS: Excellent. I have  
15      no difficulty with that as it is proffered by the  
16      Applicant and developer. Then, obviously, after two  
17      years the association would decide if it is productive  
18      to have, and they're paying for it wouldn't be  
19      restrictive if they could continue it on.

20             To that, then, when would the two-year  
21      period start?

22             MR. PARSONS: It would start with the sale  
23      of the last unit.

24             CHAIRPERSON GRIFFIS: Interesting. Okay.  
25      Comments?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1                   MR. PARSONS:     I sense underwhelming  
2 enthusiasm.

3                   VICE CHAIRPERSON MILLER: I think it's a  
4 good idea. It's just a different type of condition  
5 than we've done. So that's all. I'm just pausing to  
6 think about that, a two-year condition.

7                   CHAIRPERSON GRIFFIS: I don't think it's  
8 any difficulty. I mean I think it is well said the  
9 way he's -- I understand your concern. It's like a  
10 time condition that will disappear, but I think  
11 exactly what Mr. Parsons is getting to is appropriate  
12 for a condition of the variance because it is making  
13 sure that it is set up and then is given an  
14 opportunity to succeed. But it isn't the basis on  
15 which the variance would have been or is granted, but  
16 it's one of those offsetting opportunities.

17                   Mr. Mann, comments?

18                   MEMBER MANN: Well, I am also in favor of  
19 the van service. I wouldn't be opposed to a  
20 condition.

21                   But I would also throw out that perhaps,  
22 just something for some consideration is, I think we  
23 heard testimony that the Applicant also has developed  
24 properties in the vicinity, I think. If that's  
25 correct, if my recollection is correct, perhaps they

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 may also be able to coordinate the same sort of  
2 service, perhaps even with the same van, with some of  
3 the other properties that they have developed in the  
4 area.

5 I throw that out for our consideration, if  
6 we do condition this, that we wouldn't restrict it to  
7 perhaps this one property, but that it might be  
8 available on a broader basis, if that makes any sense.

9 CHAIRPERSON GRIFFIS: Right. In fact, if  
10 it catches on, DDOT might do a shuttle through the  
11 neighborhood, right?

12 Okay, I think it's well said. I think,  
13 Mr. Parsons, I have no difficulty in taking that on as  
14 a condition of two years commencing with the sale of  
15 the last unit and as outlined in the proposed  
16 provision of van document that was submitted.

17 Anything else then?

18 (No response.)

19 Concerns? Questions? Anything else on  
20 all of the other aspects of the variance we discussed?  
21 Any elements at all?

22 VICE CHAIRPERSON MILLER: I think the  
23 concept of the van is a good one as well, and I'm  
24 certainly willing to go along with it. I'm not sure  
25 how we're going to -- we can work it out how we're

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 going to put it in as a condition?

2 CHAIRPERSON GRIFFIS: Yes.

3 VICE CHAIRPERSON MILLER: Okay.

4 CHAIRPERSON GRIFFIS: Okay, anything else?

5 (No response.)

6 Very well. We do have a motion before us.

7 It has been seconded and conditioned.

8 I would ask for all those in favor to  
9 signify by saying aye.

10 (Chorus of ayes.)

11 And opposed?

12 (No response.)

13 Abstaining?

14 (No response.)

15 Very well, Ms. Bailey, if you wouldn't  
16 mind reporting the vote?

17 MS. BAILEY: Mr. Chairman, the vote is  
18 recorded as five, zero, zero to approve the  
19 application. Mr. Griffis made the motion; Mrs. Miller  
20 seconded. Mr. Mann, Mr. Etherly, and Mr. Parsons  
21 agreed. And it's with a condition as stipulated by  
22 the Board.

23 It's approved with a condition?

24 CHAIRPERSON GRIFFIS: Yes, exactly, with  
25 one condition.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1                   Excellent.    Thank you very much, Ms.  
2                   Bailey.   I do appreciate it.

3                   Thank you all, Board members.   Thank you  
4                   everyone who was here and participated in this case,  
5                   and the Applicant; we appreciate it.   Good luck and  
6                   we'll look to see great successes on this.

7                   With that, we're going to take five  
8                   minutes to let this group get out and then we're going  
9                   to set up right away and call the next case of the  
10                  afternoon.

11                  (Whereupon, the foregoing matter went off  
12                  the record at 4:00 p.m. and went back on the record at  
13                  4:15 p.m.)

14                  CHAIRPERSON GRIFFIS:   Very well, let's  
15                  resume.

16                  Ms. Bailey, if you wouldn't mind?

17                  MS. BAILEY:   Mr. Chairman, the last case  
18                  today is an appeal and the number is 17465.   It's the  
19                  appeal of the Advisory Neighborhood Commission 3D,  
20                  pursuant to 11 DCMR 3100 and 3101, from the decision  
21                  of the Administrative Law Judge to dismiss a DCRA/BLRA  
22                  Notice of Violation for the construction of an  
23                  unpermitted horse stable.

24                  Appellant   alleges   that   the   ALJ,  
25                  Administrative Law Judge, erred on October 20th, 2005,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 by overturning a DCRA/BLRA Notice of Violation issued  
2 to Dorchester Associates. Appellant contends that the  
3 construction of the stable violates Sections 204 and  
4 208 of the zoning regulations. The property is  
5 located in the CB/UT/R-1-A District at premises 2762  
6 Chain Bridge Road, Northwest, Square 1425, Lot 822.

7 CHAIRPERSON GRIFFIS: Excellent. Why  
8 don't we introduce for the record who we have?

9 MR. KIERNAN: Good afternoon. Paul  
10 Kiernan of Holland & Knight, on behalf of the  
11 Intervener Dorchester Associates. With me at the  
12 table is Morton Bender, the principal of the owner.

13 CHAIRPERSON GRIFFIS: Excellent. Thank  
14 you.

15 MS. GATES: Alma Gates, Chair of ANC-3D.  
16 With me is Judith Lanius of the Chain Bridge Road  
17 University Terrace Preservation Committee.

18 CHAIRPERSON GRIFFIS: Excellent. Thank  
19 you both very much.

20 First of all, I think we need to address  
21 we have a motion to dismiss this appeal. Both of you  
22 had filed written statements of the motion and then  
23 the response to the motion. They're both very clear  
24 and full.

25 However, I am going to provide no more

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1       than five minutes for each of you to brief it for the  
2       Board. You obviously don't need to; we're well up-to-  
3       speed on it. Then I would like to take up the  
4       discussions.

5               There are, essentially, if I can frame it,  
6       and hopefully I'll do it correctly, but there are  
7       three issues that are brought out in the Motion to  
8       Appeal. One is the jurisdiction. The second is  
9       timeliness, and whether, the third, the ANC has the  
10      ability to bring the appeal.

11             I'll turn to you, Ms. Gates, if you want  
12      to -- well, I'm sorry, we'll start with the motion  
13      first and see if I did it justice in terms of my  
14      summation.

15             MR. KIERNAN: I think you got two and a  
16      half right, but close enough.

17             CHAIRPERSON GRIFFIS: Indeed.

18             MR. KIERNAN: This is here, as you know,  
19      on an appeal from the decision of the Administrative  
20      Law Judge. There's no pending permit, application, or  
21      other proceeding before the Board other than the  
22      appeal itself, which I think is significant.

23             As you know from the record, on the date  
24      that the Notice of Violation was to be heard the  
25      District did not produce any evidence, did not produce

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1       their witness on this. In response to our Motion to  
2       Dismiss, the Hearing Examiner dismissed the Notice of  
3       Violation, finding that the District had not sustained  
4       its burden of preponderance of evidence.

5               At the hearing there were no witnesses  
6       taken. There was no evidence received. So there is,  
7       in fact, no record of the hearing that is in before  
8       you.

9               On the timeliness issue, which is probably  
10       the easiest to deal with, under D.C. Code Title 2,  
11       Section 1802.04(A), and as also reflected in the order  
12       from the Hearing Examiner himself, an aggrieved party  
13       has 15 days to file an appeal. The order in this case  
14       was signed October 20th. It was mailed October 25th  
15       of 2005. The appeal in this case was not filed until  
16       December 5, long after the expiration of any appeal  
17       period.

18              I could not find any authority for the  
19       proposition that this Board can adjust or ignore the  
20       statutory deadlines for filing an appeal, even if  
21       these Appellants were proper Appellants, which brings  
22       us to point No. 2, which is that the ANC and the Chain  
23       Bridge University Terrace Group are not proper  
24       Appellants. They were not parties in the proceeding  
25       below. They were not Interveners or didn't

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 participate at all as parties on the violation notice.  
2 The fact that they are unhappy with the decision of a  
3 Hearing Examiner does not make them aggrieved parties  
4 for purposes of filing an appeal.

5 I would note the District of Columbia,  
6 which did have its case dismissed below, isn't even  
7 here and hasn't, apparently, consented to being  
8 dragged back into appeal. It seems to me that if the  
9 District of Columbia has its Notice of Violation  
10 dismissed and it doesn't want to pursue it any  
11 further, that we can't have ANCs or neighbors or  
12 people unhappy with it deciding they want to make the  
13 appeal and make the District come back in and deal  
14 with a case that the District apparently no longer  
15 wants to deal with.

16 Finally, on the merits, again, under D.C.  
17 Code, Title 2, 1803.03, the scope of review of this  
18 Board on this appeal is not a hearing de novo on the  
19 merits of whether it's a stable or a shed or a lean-  
20 to, or whatever. The statute is very clear that this  
21 Board makes its determination on the basis of the  
22 record established before the Administrative Law Judge  
23 or the Attorney Examiner and shall set aside any order  
24 that is without observance of procedures or that is  
25 unsupported by a preponderance of evidence in the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 record, and thereby can affirm, reverse, or modify the  
2 order.

3 Here there was no record below because  
4 there was no hearing below. There's no allegation in  
5 the appeal papers that the Administrative Law Judge  
6 was incorrect in dismissing it, in light of the case  
7 management order which required the District to be  
8 there, in light of the fact that the case had been  
9 continued several times, and it is not in this forum  
10 that a new record can be created on the underlying  
11 merits by statute.

12 So, for all those reasons, we ask that the  
13 appeal be dismissed.

14 CHAIRPERSON GRIFFIS: Excellent. The 15-  
15 day timeline, timeliness, would go to a de novo  
16 hearing, to the record below, to the ALJ's decision,  
17 is that correct?

18 MR. KIERNAN: I'm sorry?

19 CHAIRPERSON GRIFFIS: The 15-day  
20 timeliness would go to the hearing, the ALJ's hearing?  
21 It would be to the appeal of that ruling, which would  
22 be the record below, or if there was a de novo  
23 hearing, it would be on that substance, correct?

24 MR. KIERNAN: Well, Title 2, Section  
25 1802.04 says that the order of the Administrative Law

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com



1 Judge or Attorney Examiner shall become final 15  
2 calendar days after service of the order upon the  
3 respondent --

4 CHAIRPERSON GRIFFIS: Right, so --

5 MR. KIERNAN: -- unless somebody files an  
6 appeal.

7 CHAIRPERSON GRIFFIS: Right. So the  
8 direct question, though, just for clarification, is  
9 that 15-day clock is if what is under appeal is the  
10 decision of the ALJ?

11 MR. KIERNAN: Right.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. KIERNAN: Yes, which is what the  
14 appeal has been styled in this case.

15 CHAIRPERSON GRIFFIS: Yes. Okay.

16 Questions?

17 VICE CHAIRPERSON MILLER: Okay. With  
18 respect to the argument that the ANC didn't have  
19 standing to appeal this order in any event, I think  
20 you stated that DCRA has standing? Is that correct?

21 MR. KIERNAN: I think they would.

22 VICE CHAIRPERSON MILLER: And would that  
23 be the Zoning Administrator or who would that be?

24 MR. KIERNAN: I guess -- well, I don't  
25 know. That's a good question. I'm not sure. I'm not

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1       sure what is the answer.

2                   VICE CHAIRPERSON MILLER: Okay, that's all  
3       for now.

4                   CHAIRPERSON GRIFFIS: Does this structure  
5       still exist?

6                   MR. KIERNAN: It's still there, yes.

7                   CHAIRPERSON GRIFFIS: You made a comment  
8       that I hadn't seen in writing yet -- the District  
9       isn't here, which is actually kind of striking -- that  
10      you take that as a notion that they no longer want to,  
11      I think you said, deal with this.

12                  MR. KIERNAN: Well, I'm drawing from the  
13      fact that the District did not file a timely appeal,  
14      and they would be the parties who would have the right  
15      to appeal.

16                  CHAIRPERSON GRIFFIS: Right.

17                  MR. KIERNAN: But they have decided not to  
18      appeal this matter.

19                  CHAIRPERSON GRIFFIS: Right.

20                  MR. KIERNAN: Whether the underlying issue  
21      is dealt with in other places is an issue for another  
22      day.

23                  CHAIRPERSON GRIFFIS: Yes?

24                  VICE CHAIRPERSON MILLER: I would note  
25      that they're not here today, either.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Pardon me?

2 VICE CHAIRPERSON MILLER: They're not here  
3 today, either.

4 CHAIRPERSON GRIFFIS: That's what we're  
5 talking about.

6 VICE CHAIRPERSON MILLER: Oh, I thought  
7 you were talking about the fact they didn't appeal  
8 the --

9 CHAIRPERSON GRIFFIS: No, that was clear  
10 on the writing of the submission, but that they're not  
11 represented here -- I'm not sure what -- it's not  
12 good, but I'm not sure what to make of it.

13 Okay, Ms. Gates?

14 MS. GATES: Thank you, Mr. Chairman.

15 The ANC believed when Ms. Lanius came  
16 forward about the illegal stable and its illegal  
17 construction that it did have the right to file an  
18 appeal. Anyone can file an appeal in the District of  
19 Columbia.

20 The fact that the ALJ dismissed this  
21 leaves everyone with their hands tied because it was  
22 both the Chain Bridge Road Committee and the ANC who  
23 pushed this violation forward. It was Mr. Kiernan who  
24 sort of sidetracked it over to the Office of  
25 Administrative Hearings. It really should not have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1        gone there. It should have come to you. I think  
2        there's evidence in our submission that would indicate  
3        that.

4                    I wonder if DCRA isn't here today because  
5        they do support the ANC and the Committee.

6                    There was a preponderance, I believe, of  
7        evidence in our initial filing that would indicate  
8        this is an illegal structure. It needed a special  
9        exception to be built on the property. A permit was  
10       never issued for its construction.

11                   Notices were issued to Mr. Bender on  
12       November 18th, December 20th, and February 20th.  
13       Instead of going through the proper channels, he  
14       sidestepped it, as I said before, and went to the  
15       Office of Administrative Hearings. This case has  
16       never been heard.

17                   CHAIRPERSON GRIFFIS: Right. Okay,  
18       anything else?

19                   MS. GATES: One other thing about  
20       notification and timeliness; I think I need to address  
21       that.

22                   Unlike the Historic Preservation Review  
23       Board, the Zoning Commission, the National Capital  
24       Planning Commission, or the BZA, the Office of  
25       Administrative Hearings does not notify ANCs of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1       hearings or opinions which may be of interest to their  
2       districts.   So it wasn't until I went down to the  
3       Office to obtain a copy of the final order that I was  
4       aware there was a 15-day limit, where it clearly  
5       states in Title 11 that we do have 60 days, and we  
6       certainly met that.   So I think there's some  
7       contradiction here in whose timeliness because it  
8       refers the issue to you.

9               CHAIRPERSON GRIFFIS:   Right, under the  
10       civil infractions.

11              Go ahead.

12              VICE CHAIRPERSON MILLER:   The sixty days,  
13       could you just refresh my memory of your starting date  
14       of the 60 days?   You were within the 60 days of some  
15       date.   What's your starting date?   It's not October  
16       20th because you --

17              MS. GATES:   Even if we went to October  
18       20th, we filed on December 5th.   So we met that  
19       deadline.   That would have put us within 60 days.

20              VICE CHAIRPERSON MILLER:   I see.   When did  
21       you find out about it, though?   Do we have a date?

22              MS. GATES:   We were informed on October  
23       the 5th at our ANC meeting.

24              VICE CHAIRPERSON MILLER:   October the 5th?

25              MS. GATES:   No.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 VICE CHAIRPERSON MILLER: No?

2 MS. GATES: No, it was dismissed on the  
3 29th. So then you came to the October meeting. You  
4 had been to the hearing.

5 I am not the person Mr. Kiernan saw at the  
6 meeting.

7 VICE CHAIRPERSON MILLER: Okay, that's  
8 okay because you're saying, in any event, you're  
9 within the six months (sic).

10 MS. LANIUS: Sixty days.

11 MS. GATES: Sixty days.

12 VICE CHAIRPERSON MILLER: What is the  
13 error -- the 60-day rule talks about anyone being able  
14 to -- anyone in the public, regardless of whether you  
15 are a party to that appeal, being allowed to bring an  
16 appeal concerning an error that was made by the Zoning  
17 Administrator or by some other authority with respect  
18 to the carrying out or the administration or the  
19 enforcement of a zoning regulation. So I'm wondering,  
20 what is the error that you are alleging?

21 MS. GATES: The first error would be the  
22 fact that this even went to the Office of  
23 Administrative Hearings. The second would be that no  
24 hearing took place. So the violation is just now  
25 dropped, I believe.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: Excellent. I think  
2 that's some clarity.

3 You made a statement that said everyone or  
4 anyone is able to file an appeal in the District of  
5 Columbia, and I think Ms. Miller was picking that up.  
6 I don't contest that at all.

7 MS. GATES: Under Section 3112.2.

8 CHAIRPERSON GRIFFIS: Sure. But even  
9 outside of that, I think that the issue perhaps, and  
10 Ms. Miller has stepped right into it, is making sure  
11 that anyone that does bring an appeal brings it on the  
12 right issue and to the right body. I don't think that  
13 we have definitely dispensed with our decision on  
14 timeliness, but I think it would be correct to say  
15 that there may be some discrepancy between the 60 days  
16 and the 15 days on the Zoning Act and the Civic  
17 Infractions Act, and whether you've met the 15 days or  
18 not, I will hypothetically say we're not dealing with  
19 that immediately and move on to the next, to Ms.  
20 Miller's question, which goes directly to, what is the  
21 element under appeal for us?

22 Because we would not have any zoning or  
23 any jurisdiction to remedy or to hear an appeal on  
24 whether the administrative hearings took place, or if  
25 we were to pick that up, finding it timely to hear the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 appeal on the ALJ's dismissal of that, for lack of  
2 presentation of a case or a witness. Again, I am not  
3 sure where we would find our substance or jurisdiction  
4 in a zoning issue.

5 Lastly, I want to find a remedy to this  
6 because it's the strangest thing that I have come  
7 across. It seems in reading all of the file here that  
8 the government, DCRA, and the ANC were all moving in  
9 the same direction, and yet official action didn't  
10 take place.

11 I just don't know what we can do as a  
12 Board at this time with what is presented to us.

13 So, succinctly put, I would have to ask  
14 you again what Ms. Miller has just asked: What is the  
15 element under appeal? What is the error?

16 MS. GATES: Let me read something that  
17 Toye Bello wrote to us.

18 "You will recall that in response -- this  
19 was written on the 11th of April, 2005. "You will  
20 recall that in response to a Notice of Violation and  
21 Notice to Abate issued by the Zoning Division, a  
22 building permit application was eventually filed by  
23 the owner. That application was issued" -- and I  
24 think when we edited this, something happened, but it  
25 says, "That application was issued a referral to the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com



1 Board of Zoning Adjustment for a special exception, as  
2 required by the zoning regulations."

3 CHAIRPERSON GRIFFIS: I know exactly of  
4 what you speak, and I think the Board's familiar. So  
5 Mr. Bello said, yes, they put in a permit, tried to  
6 remedy the situation. We referred him to the Board.  
7 We've got a letter sitting here. We've tried to  
8 service several times. Where's the error? Did Mr.  
9 Bello error in his actions?

10 MS. GATES: No, I don't think he did. I  
11 think up to this point he did what he could. I mean  
12 three violation notices were issued.

13 CHAIRPERSON GRIFFIS: Yes, right.

14 MS. GATES: So you're asking me who erred.  
15 Obviously, I believe Mr. Bender erred by not doing  
16 filing for a special exception hearing, and if he were  
17 granted, that he file for a building permit. This  
18 whole thing is totally backwards.

19 I realize we're both in a difficult  
20 position. However, I think we could set the record  
21 straight today by saying, "Okay, this is the Board  
22 saying, okay, we're going to hear this special  
23 exception request," and that's what we're asking you  
24 to do.

25 CHAIRPERSON GRIFFIS: I'd be happy to do

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 that, but we don't have a special exception before us.

2 MS. GATES: I'm sorry?

3 CHAIRPERSON GRIFFIS: I'd be happy to, but  
4 we don't have a special exception before us.

5 MS. GATES: Why don't you?

6 CHAIRPERSON GRIFFIS: Because you brought  
7 an appeal.

8 MS. GATES: Well, that is what I was  
9 advised to do.

10 CHAIRPERSON GRIFFIS: No, I understand  
11 that. I understand that.

12 MS. GATES: I would be happy to go file a  
13 special appeal, if that's what you're telling me to  
14 do.

15 CHAIRPERSON GRIFFIS: No, no, no. No, it  
16 would be the property owner's responsibility to bring  
17 a special exception.

18 MS. GATES: Okay, thank you.

19 CHAIRPERSON GRIFFIS: Yes.

20 MR. PARSONS: But it seems to me, if you  
21 were to take an action, it would be against the  
22 property owner directly, rather than trying to find  
23 some sort of remedy here in the D.C. Government, but  
24 I'm not a lawyer, so I just stepped over the edge and  
25 I can see our attorney at the other end saying,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 "That's not your place, Parsons. Don't start advising  
2 somebody how to deal with this matter."

3 (Laughter.)

4 But please interrupt. I'll stop.

5 MS. GATES: Well, I really did think, Mr.  
6 Parsons -- thank you for saying that -- that by filing  
7 this we were taking action.

8 CHAIRPERSON GRIFFIS: Right. As you well  
9 know in other appeals, in other elements that you've  
10 been involved in, we are the appeal body for official  
11 actions, the Mayor's action as it pertains to zoning  
12 and his designate. So the Zoning Administrator or  
13 anyone else, for that matter, that steps into the  
14 realm of zoning.

15 What we have difficulty in this is  
16 reinventing ourselves and going at this as an  
17 enforcement. Really all of this is tying into the end  
18 result of some enforcement.

19 If we kept stepping -- if there was a  
20 record that was before us somehow that we could even  
21 grab onto --

22 MS. GATES: I think part of the problem  
23 for all of us is the fact that shortly after April, or  
24 sometime in there, Mr. Bello left as the Zoning  
25 Administrator, and nobody there picked this up.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1       However, I believe the community and the ANC felt it  
2       was moving forward until it was dismissed.

3               CHAIRPERSON GRIFFIS:   Right.

4               MS. GATES:   Had he been there to sort of  
5       pick it up, I think things would be different.

6               CHAIRPERSON GRIFFIS:   Right.  It may well  
7       be.  I'm not sure that I disagree with you there.

8               Be that as it may -- well, I suppose, as  
9       Mr. Parsons says, our attorney is in the room and I  
10      need to be careful, but it is a frustrating position  
11      to be put in when we see so many frivolous things that  
12      happen across the City, and then we see elements that  
13      seem to be going down the correct path, or at least  
14      the corrective path, that things don't come to  
15      fruition, and we expend an awfully lot of energy from  
16      every side, from the property owners to the community,  
17      to ours, in setting these things up and looking at it.

18              I don't know what to do with this.  I  
19      don't see how, one, the time limit threshold is met  
20      here.  I don't see how the jurisdictional element is  
21      met, and I'm not persuaded that I even need to address  
22      whether the ANC has standing to bring the appeal, but  
23      on two other elements it seems to fail.

24              I'm, frankly, more vested and spent more  
25      time trying to figure out where or what we would

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 actually be looking at, if we were to continue with  
2 this, and I still can't find it. So, as you say,  
3 well, we could just take this up and just kind of run  
4 with it as we will and try to find some substance or  
5 some relief, and, frankly, it would be a waste of your  
6 time and ours, as far as I've seen.

7 MS. GATES: Perhaps it would be best for  
8 us to return to the new Zoning Administrator and have  
9 another Notice of Violation issued.

10 CHAIRPERSON GRIFFIS: Yes, maybe so.

11 I'll let you address any of these issues,  
12 if you wish.

13 MR. KIERNAN: I disagree with getting a  
14 new Notice of Violation, but other than that --

15 CHAIRPERSON GRIFFIS: Indeed.

16 Other comments from the Board? Does  
17 anyone else want to -- yes, Ms. Miller.

18 VICE CHAIRPERSON MILLER: I have a lot of  
19 comments. I don't know whether we want to just do it  
20 now or for a motion.

21 CHAIRPERSON GRIFFIS: I think under a  
22 motion is probably the best.

23 VICE CHAIRPERSON MILLER: Okay. Then,  
24 unless any other Board members want to ask any other  
25 questions before we -- okay, then I guess I would

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1       reluctantly move to grant the Motion to Dismiss the  
2       appeal on grounds of jurisdiction.

3               MR. PARSONS:   Second.

4               CHAIRPERSON GRIFFIS:   Thank you.

5               VICE CHAIRPERSON MILLER:   I think that it  
6       appears there's some wrongdoing perhaps out here, but  
7       that this isn't before us jurisdictionally.   The  
8       reason I think so is I looked at it in two ways.   One  
9       is an appeal of the decision, which I think does fail  
10      for two reasons.   One is timeliness.   It's 15 days  
11     within mailing of that order.   And, two, the ANC  
12     wasn't a party to that case.   So I don't believe that  
13     the ANC does have standing to appeal.

14              MS. GATES:   Ms. Miller, can I just tell  
15     you that the ANC would never have standing at the  
16     Office of Administrative Hearings?

17              VICE CHAIRPERSON MILLER:   Okay, but I  
18     don't think the ANC has -- that we have jurisdiction  
19     for that reason.

20              Then with respect to -- we do have  
21     jurisdiction within 60 days of the ANC knowing about  
22     some error.   I have been kind of searching for like,  
23     what is the error?   Because there are things that  
24     don't look so right here.   But we don't have  
25     jurisdiction over any errors.   We only have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 jurisdiction over the enforcement, the carrying out,  
2 the administration of the zoning regulations.

3 When I look at this, when I'm looking for  
4 an error, I say, okay, well, gee, how come DCRA didn't  
5 appeal that decision? I think that's an error. But  
6 that's not an error involving the carrying out of  
7 zoning regulations.

8 So I think that is the problem here, and  
9 we can't force anybody to bring a special exception.  
10 If they put up something in violation of our zoning  
11 regulations, then that is up to DCRA to bring  
12 enforcement action, as they did. It looks like they  
13 dropped the ball on that.

14 Certainly, Mr. Bender could come forward  
15 at any time and bring himself into compliance and file  
16 an application for a special exception, but that's not  
17 what is before us. What's before us is an appeal.

18 There's been some allusion, and I don't  
19 see any problem with my referencing a statute that  
20 does give a neighboring property owner the right to  
21 bring their own private action against a property  
22 owner if they feel that they have violated some zoning  
23 regulations, and that's 6-641.09. I'm not advising  
24 you to do that. I'm just saying that relief may be by  
25 another course of action, and this Board just doesn't

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 have jurisdiction to grant relief always when it would  
2 like to.

3 CHAIRPERSON GRIFFIS: Excellent. Thank  
4 you very much, Ms. Miller.

5 Others? Any other comments?

6 (No response.)

7 Very well. We do have a motion before us  
8 and it has been seconded. Let me ask for all those in  
9 favor of the motion to signify by saying aye.

10 (Chorus of ayes.)

11 Opposed?

12 (No response.)

13 Abstaining?

14 (No response.)

15 Very well, Ms. Bailey?

16 MS. BAILEY: Mr. Chairman, the vote is  
17 five, zero, zero. The Board has voted to dismiss the  
18 appeal. The Board has indicated that it does not have  
19 jurisdiction to hear this case.

20 CHAIRPERSON GRIFFIS: Excellent. Thank  
21 you very much, Ms. Bailey. I appreciate it.

22 Again, thank you all. We appreciate this,  
23 and sorry it took us until 4:00 to get to it, but  
24 there it is. We certainly hope that there's, oh,  
25 well, good things always to happen. Enjoy.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com



1                   Is there any other business for the Board  
2                   this afternoon?

3                   MS. BAILEY: No, Mr. Chairman.

4                   CHAIRPERSON GRIFFIS: Then if there's no  
5                   further business for the Board, let's adjourn.

6                   (Whereupon, at 4:43 p.m., the proceedings  
7                   in the above-entitled matter were adjourned.)

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)